14.32 hrs.

Title: Discussion on the Patents (Amendment) Bill, 2002 (Bill passed).

MR. CHAIRMAN : Now, the House will take up Item No.19, Patents (Amendment) Bill, 2002.

THE MINISTER OF COMMERCE AND INDUSTRY (SHRI MURASOLI MARAN): I beg to move:

> "That the Bill further to amend the Patents Act, 1970, as passed by Rajya Sabha, be taken into consideration."

Hon. Chairman, Sir, my brief introduction of this Bill to further amend the Patent Act, 1970 must begin with an acknowledgement of the uniquely constructive debate and support during the passage of the Bill in the Upper House. The Government's sensitivity to all issues and its responsiveness to suggestions for improvement was equally matched by an appreciation of the need to honour international obligations and chart a clear path for R&D driven economic development.

The Members are aware that the agreement on TRIPS is an integral part of the "take-it-or-leave-it" package finalised in the GATT Uruguay Round and the Draft Final Act signed in December 1993. The Pact itself was signed in Marrakesh on 15th April, 1994. The text of the TRIPS has been described as a masterpiece of ambiguity, couched in the language of diplomatic compromise, resulting in a verbal tight-rope walk, with a prose remarkably elastic and capable of being stretched all the way to Geneva.

Be that as it may, we are required to meet some time-bound obligations in the area of intellectual property protection. The proposed changes in patent law are overdue by nearly two and half years.

In order to do this we must, firstly, carve out a law without permitting any ambiguity under the TRIPS agreement to come in our way so as to safeguard our national security, national interests, public health as also ensure availability of medicines at affordable prices, which is one of the human rights.

Secondly, we need to design a system for a new era of explosions of state-of-the-art technologies, since internationally approved patent protection regime has become the measuring rod of a country's technological and industrial progress and the protective shield for a knowledge driven economy.

Thirdly, we must take note of the awakening of the conscience of the humanity, which was helplessly watching while millions died and while millions more continued to suffer in silence because of HIV/AIDS. In mobilising this international public opinion, India, along with Brazil and about 55 African countries, took the lead and the result was the path-breaking Doha Declaration on TRIPS and Public Health. This Declaration provides flexibilities and there is a need to make use of them to the fullest possible extent in our law.

And lastly, we have to make the administrative system more user-friendly to facilitate knowledge and creativity driven wealth-creation, economic progress and betterment of life.

I am happy to say that the Bill before the House seeks to meet these objectives. The drafting of the Bill was preceded by extensive broad-based and countrywide consultation with all interest groups. More importantly, this Bill had the benefit of detailed scrutiny by a Joint Committee of Parliament. The JPC has taken full note of all developments in its comprehensive report and provided necessary safeguards, which are required, by availing the flexibilities in full. The Committee held 39 meetings over a period of two years to consider the provisions of the Bill and finalise its views. During its deliberations, the Committee also had meetings with different stakeholders.

The Committee has reinforced the flexibilities already provided in the legislation with a view to address national and public interest requirements/concerns, especially those relating to public health and nutrition. More importantly, the Committee has fully restructured the existing provisions relating to public interest, compulsory licensing, Government use, national security, protection of traditional knowledge and protection of public health and nutrition as contained in Chapter XVI (Working of Patents, Compulsory Licences and Revocation) of the Patents Act.

The Government has decided to accept the Bill, as redrafted by the Committee, virtually in its entirety and totality.

I reiterate my compliments to the Chairman and Members of the JPC for the re-working of the Bill to meet the needs of the nation. I am also pleased to inform this House that prior to consideration of the Bill in the Rajya Sabha, I had again held consultations with Members from the Opposition including Mr. Mani Shankar Aiyar and Mr. Rupchand Pal and we have made further amendments in the legislation. These have already been incorporated.

There are provisions in the Bill providing a wide-ranging and powerful weapon to the Government to extinguish the patentee's exclusive right immediately and acquire it if the occasion warrants. Let any crisis situation be visualised;

the present Bill covers all contingencies.

We have not diluted any of the earlier provisions, nor compromised our positions and interests − rather, we have designed a strong and modern intellectual property Act.

I may further mention upfront that introduction of the product patent regime for drugs, pharmaceuticals and agro-chemicals, is not contemplated in the present Bill because India is not obliged to provide that until 1.1.2005.

As stated in the Upper House, it is now necessary for us to set aside the international and internal 'pharma politics' and look at the future. The Indian drug and pharma industry has made the fullest use of the Patents Act of 1970 and we are now not only the net-exporter of generic medicines but also emerging as the new leader of the knowledge-based drug industry in the world, following software and IT. Now is the time for the rest of the industry to come out of its 'reverse engineering' mode and move forward into the era of innovative 'research and development' mode, clinching the opportunities.

I have no doubt that Indian industry has the necessary strength, capability, dynamic thinking and growing confidence in the advantages of entering a new era. Many Indian companies have pioneered and demonstrated these qualities and they deserve our praise.

Those who want to specialise in generic medicines need not be worried since around 90 per cent of medicines in the world are generic medicines only and the situation is likely to continue to be so since thousands of patents are expiring every year. None of the 279 drugs listed in the National Essential Drug List, 1996 of the Government of India is covered by patents today.

Critics have asserted that vis-à-vis TRIPS the Bill does too much; others have observed that it does too little. If anything, these criticisms confirm the fine balance which the Bill strikes between meeting our international obligations and all of our national concerns. I would categorically state that all aspects and relevant provisions of TRIPS, the Paris convention and other Conventions, post-TRIPS patent laws of different countries and the Doha Declaration have been taken on board. All ambiguities have been removed and available flexibilities are made use of to the maximum to protect the varied interests of our nation.

The Bill also reflects the united will and wisdom of the JPC. Its multi-dimensional issues have been discussed extensively many times earlier. I, therefore, pray for constructive consensus and endorsement from all sections of the House. Let us take India forward even while letting the world know that Indian democracy correctly honours its international commitments.

With these words, I place the Bill before this august House and as it is a national endeavour, I appeal for support transcending party-lines.

MR. CHAIRMAN : Motion Moved:

> "That the Bill further to amend the Patents Act, 1970, as passed by Rajya Sabha, be taken into consideration. "

SHRI RUPCHAND PAL (HOOGLY): Mr. Chairman, Sir, I have been associated with this issue for quite a number of years. When I first raised the issue in the Private Members' Resolution about the issues involving the Dunkel proposals, at that point of time, hardly we were aware of all the dangers inherent in the proposals.

As you know, the TRIPS part of WTO agreement came only at a later date and still now there are questions how and why TRIPS should be made a part of the WTO agreement. I am not elaborating that point because the debate and discussions are taking place among the experts. WTO agreement being a very complex sort of document, it is never possible for people belonging to any particular discipline to unravel all the intricacies rather mysteries and behind the scene manoeuvres and the hidden agenda whatever you call it. As we go on looking at several provisions of not only WTO but also TRIPS, we do find that the conspiracies are unravelling in the matter of interpretation of the provisions.

Sir, in the beginning, it was said that TRIPS agreement is a part of the WTO agreement. It was to provide better health opportunities, better scientific research, better agricultural production, sharing of technologies and transfer of technologies, but, today, we find that it has never happened in the matter of transfer of technology. The developed countries are as reluctant as they have been earlier and we are at the receiving end. We continue to be at the receiving end. The WTO as also the TRIPS are heavily biased against the developing countries and the poorer countries of the world. It has been once again emphasised in spite of the small gains we have made at Doha. Of course, I do not want to under-estimate the achievement, but still whatever has been said there can be interpreted

in a different way. In one place it is said that we agree with the TRIPS agreement. It should not prevent Members from taking measures to protect public health. But again in another place, it is being said that the WTO Members have the right to use the full the provisions in the TRIPS agreement. In the TRIPS agreement it is stated that the steps can be taken to protect the public health interests, but again and again provisions were coming which actually just take away the right to provide health care for poor countries like India and other developing countries.

As you know, Sir, there have been debates and discussions at very important levels. There is a reference to the introduction of a Declaration made by a group of people, including eminent jurists, economists, bureaucrats and people associated with the deliberations in connection with the WTO and all that. There is a letter from Shri V.R. Krishna Iyer, addressed to the Parliamentarians, which says:

> "By prohibiting the Controller of patents from granting any patent application on food, drug and medicine, till a new Patents Act was enacted to suit the genius of India, what was the situation in this country?"

After all, we reached a goal in the form of an Act of 1970 which was, throughout the world, recognised as a model Act. We are deviating from that 1970 Act which had tried to provide protection not only to our health care needs but also to our pharmaceutical industry. Now we find that our own pharmaceutical industry will be in jeopardy and will have to face unequal competition. I have amendments which I am giving below on issues which have not been addressed properly. Although some of the major concerns have been addressed both in the Joint Committee Report as also subsequently by the Minister when some of us had a meeting with him, yet I believe that the concept of compulsory licensing and the right of the Government have not been adequately addressed, as it has been done in France.

I have mentioned certain other things as you have noted, in the Report of the Standing Committee, in the form of a Note of Dissent. This concerns the licence of right that if anyone is not producing as such, fulfilling the needs of a particular situation prevailing in a particular country like India, what will happen? I want to move an amendment and I believe that the issue has not been addressed properly, I want that after waiting for a specified period, the Government will have the power and no provision in the TRIPS can stand in the way. If France can do certain things, if Argentina can do certain other things, if Brazil can take up their own national cause, why can we also not do it? I do not intend to be harsh, but in the name of the TRIPS compliance, sometimes we have noticed that when our country has been asked to comply with certain options, even before considering the options we have surrendered and later on when there have been criticism from several important quarters, from experts and others, the situation has been tried to be salvaged, but it could not be salvaged at that point of time. The damage had already been done. Our minds had already been known to others. Sometimes it is said that if we do this, if we do that, then we shall earn a bad name in the comity of nations, that India is a country which has not looked into the several provisions of TRIPS; their sole aim to see they are TRIPS compliant. Who is taking care of the WTO provisions? Is America doing it? Say, in the case of steel, say, in the case of many other issues - I am not elaborating that - they are interpreting things according to their own will, according to their own law. They do not believe in multilateralism in trade at all and they are acting at the instance of the multinational companies only. I have serious objection to the tenure of the patent and my Note of Dissent covered particularly this area among some other important areas of concerns which have been discussed at national level by experts, by international bodies.

What was that? It was the term of the patent protection. The term of the patent protection available shall be 20 years from the date of filing the patent application or eight to ten years from the date of sealing of the patent, whichever is shorter. That was my concept. That was my note of dissent. What is the objection of the Government? I need to be convinced; although there have been people associated with it who wanted to convince me that it cannot happen. I had gone through the patent laws that have been passed, that are in the process of being passed and also the future considerations of many countries. Very many countries have taken a stand. Why can't India; I am not saying -follow their footsteps; follow the tactical line that was adopted by so many countries? It is not being done. The Minister has tried to explain things in his own way so many times, but I was not at all convinced.

For example, I am coming to the compulsory licensing, in particular to clause 84. "If there is unsuccessful attempt to obtain compulsory licence direct from the patenteeâ€¦". It is being said in respect of compulsory licensing that it will be in the case of extreme national emergency. But there may be situations which may not be related directly to our domestic situation. I am making a mention about such problems , say, if some terrorists polluted waters and some germs and such other things have been spread. In such a case, particular medicines are to be used. What happens in such a situation? Some companies in India have been producing this particular medicine and you know what may be the demand. It is not a national emergency as such will not compulsory licencing allowed in such a situation ? . What will happen if in any part of the country, a particular unpredictable sort of health problem comes up? It has happened in many parts of the world.

What happened in South Africa about HIV AIDS? They said, "No, we will not agree." There were demonstrations.

They said that they would not agree to this patent regime. We do not want to create such a situation. So, we must have more freedom, more authority at the hands of the Government because in the TRIPS Agreement, there is mention everywhere that the policies have to be determined by the sovereign Parliament of that particular country. We are a sovereign Parliament. We can come to a particular decision in the national interest. We have not compromised our sovereignty only because we have joined WTO, only because we are a signatory to a particular document. If other countries can follow a particular line in their national interest, why can we not do it? I am reading out my amendments. Strangely enough, we received the Bill today morning only; it has happened. It has been mentioned in the morning. So, I am not repeating it. But only today, in the morning, we got a new Bill and we had been given time till 2.00 p.m. today for amendments, but in the meanwhile, I have submitted my amendments as far as possible, even on the basis of earlier introduced Bill. There have been some serious problems with regard to the ordering of the clauses and all these things. The Lok Sabha Secretariat is looking into it and amendments are yet to come.

But what is my amendment? I will not take much of the time of the House as we have got other Members also who will speak on this Bill. I may be permitted time to speak at the time of moving my amendments also. It is for your consideration, but before that, I want to speak on a very important point with regard to unsuccessful attempt to obtain compulsory licence. Where the individual merits of an applicant have been determined by the Controller to use the patented invention and that the proposed user has made efforts to obtain authorisation from the patentee to use the patent on reasonable commercial terms and conditions, and that such efforts have not been successful within a reasonable period of time, what should the Government do?

If an MNC is sitting over the product, and the people of our country, in a particular situation, need that particular medicine, what should the Government do? My suggestion is that the Controller shall, at any time after the expiration of three years from the date of sealing of the patent, grant compulsory licence to the proposed user on such terms and conditions as he may deem fit. This is the right of the Controller. This power should be given to him through the amendment proposed by me. So far as the reasonable period is concerned, I had just quantified the number of days and all these things, but I am not going into it.

Now, I come to the right or authority of the Controller to issue compulsory licence on any product related to public health. I want to make a new addition after section 92. It says:

> "At any time after the sealing of patent, the Controller shall have the right to issue compulsory licence or licences on any patented product related to public health, as notified by the Government in public interest in official Gazette, on such terms and conditions as he may deem reasonable."

I have mentioned about royalty also, that is, how much we should pay. The reasonable terms and conditions should be either lump sum compensation or a royalty. Here, I have set a limit on the basis of the experience of the past years, on the basis of global experience, that is, not exceeding four per cent of net ex-factory annual sales turnover payable to the patentee for the remaining term of the patent.

Sir, my next objection to the Bill is about the patenting of life forms. I think, the issue relating to micro-organism, as it has been stated, is an ethical issue. What is the definition of life form? The definition is, 'where the non-life ends, and life begins'. These are all issues related to new areas of genetics, biology, recent disciplines of bio-sciences, and I am not going into that. But after the concept of cloning not only plant seeds and all these things, but also even human cloning -- there are reports that surreptitiously such human cloning might have taken place in certain laboratories -- I have been pleading that any form of patenting of any life form should be in such a manner that it does not give any scope for use of cloning against the interest of any plant, any race, any animal, any species which, ultimately, cause imbalance in the environment.

I have said that there are concerns about national security. Therefore, I would suggest an amendment after clause 157. Health security is one part of security, and that has been partly taken care of in the Doha Declaration. Biological security is another security, and then comes the economic and territorial security. I will you one example about micro-organism.

15.00 hrs.

One very eminent global expert came for evidence before a Committee. I do not know if it would be correct to quote him here even though the Report of the Committee has already been submitted. In our exclusive economic zone under the ocean, there are a lot of elements, plants and herbs. Even if the soil attached to the micro-organisms found under the ocean is taken away or its ingredients are separated from each other − as it has been done in case of turmeric, *karela* and neem − and is tried to be patented, the ecological balance of our exclusive economic zone the assets there neede to be protected. The micro-organisms found in our exclusive economic zones are our future assets and, as has been indicated by some scientists, they could help in curing of many of the diseases. So, my plea is that when we talk of security, it is not the question of territorial or biological security alone, but security in all

matters. Our country is rich in its bio-diversity. Our strength lies in our being rich in bio-diversity. But still there is need for some improvements in the Bill as has been passed by the Rajya Sabha. But I would have been happy if there could have been a complete consensus on all the provisions of this Bill. I am sorry to say that there are a few grey areas in this Bill. The countries like France, Argentina, Brazil and others have taken independent stand. But in case of our country, this is not an aspersion on any individual, when we were asked to bend a bit we started crawling. This is what has happened in case of WTO and in case of TRIPS. But still I consider that there have been some improvements and some of the concerns have been addressed but the situation after the Doha Conference has certainly not become simpler but rather it has become more complex. I hope the hon. Minister would take note of our concerns and would communicate our feelings in the comity of nations.

Sir, the third amendment is likely to come in the year 2004 and I have a point to make about patenting of molecules. It is about adding up the doses and modification of doses by using molecules. Some combination of doses of molecules could be used for treatment of HIV AIDS and some different combination of doses of molecules could be used for the treatment of cancer. So, in case of patenting of molecules, the concept of invention should be properly and adequately addressed, otherwise changes in the doses would create a serious situation. I am not pressing with my amendment in this regard at this stage but certainly I would like the hon. Minister to address this concern when the next amendment comes up in the year 2004.

SHRI ANADI SAHU (BERHAMPUR, ORISSA): Mr. Chairman, Sir, I stand here in support of the Bill. Before I go into the various provisions of the Bill, I would like to congratulate the hon. Minister for his courageous efforts and the results at the Doha Conference in guarding our national interest in spite of international obligations.

This Bill, as the hon. Minister has very rightly said, has gone through the mill itself. He has been very kind to discuss this matter with members at every stage, even after the JPC had cleared it. This shows that he is quite liberal in his attitude in ensuring that a proper Amendment Bill is brought forward so as not to put this country or our people in jeopardy at any stage.

Shri Rupchand Pal, by training and by ideology, always sees the darker aspects of life. Today he did not see darkness much, he only saw the grey points. Sometimes he saw the glass half-empty and sometimes the froth coming up. His last sentence was very good.

To a layman like me patent is a contract between the society and the inventor. Since an inventor has to get the rights or the fruits of his invention, he should have the right to sell it, use it, or give it gratuitously, to somebody else. Selling, using, gratuitous help, or giving it for a particular purpose also require a little bit of control. When there is a little bit of control, it has to be thought of not only in one country but in other countries also.

The TRIPS Agreement under the WTO has taken into consideration all aspects of intellectual property rights. We have enacted Trade Marks Act, Designs Act, the Plant Varieties Protection Act and also the Copy Rights Act. This was the last one to come. In the last two years it was almost in an embryo stage. Now it has come to fruition.

When we think of the Patents Act, Shri Rupchand Pal had said this and I also agree with it partially, it would not be a rigid amendment. As we go ahead with the implementation of the procedures, we have to adapt ourselves to the circumstances, the international requirements that may come at any given point of time; and new amendments may be required.

It is interesting that in the 20th century intangible objects have become tangible matters to be sold and bought like that. In the TRIPS Agreement we have moved from the tangible to the intangible. Once we moved from the tangible to the intangible, we have to make certain procedures, as I have already said. When we make procedures we have to define the procedures. We have to define the intangible objects and the persons who will be interpreting these things. This Bill starts with that.

First of all, we have started with an amendment of the definition in Section 2. I am not going into details as it will take a lot of time. When we go into the definition itself, we have to think as to what are patents, how to enter a patent. It says that it should be new, that it should involve an inventive step, it should be capable of industrial use, and it should be non-obvious. Keeping these things in view, the definitions have been amended in a proper manner. When the definitions are amended the procedures also have to be amended. That has been done in Section 3 where it has been indicated as to what type of things could not be patented.

Shri Rupchand Pal was thinking of molecules and all other things. There is a definition. The amendment indicates the things, which would be non-patentable. Once things have been patented, it is a question of the right of the patentee. When we think of the patentee, it would lead us to Section 48.

As I said, I would not go into the details of these Sections as it would take a lot of time.

When we think about the rights of the patentee, the next step is the question of licensing. He was talking about compulsory licensing. Sections 84, 85, 87 etc., are there. We should not think of Section 84 in isolation. We have to think of Sections 84 and 85 along with Sections 87 and 88. Sections 87 and 88 have to be taken into account when we think of compulsory licensing and the power of the Controller of Patents.

Very clearly, all these facts have been indicated in the amending provisions so as to leave no ambiguity as to what type of compulsory licensing should be there, as to what type of restrictions should be there, and as to what type of rights the patentee should have.

Now, the matter is very important. We have been amending these provisions keeping in view the TRIPS Agreement. It is an international Agreement. We have to take into consideration the fact that the world is becoming too small that we have to take into consideration all aspects relating to different activities in different countries.

Sir, you will kindly find that a large number of countries have become signatories to the TRIPS under Article 27 relating to Patents. Article 31 gives a lot of scope to the Governments of the countries concerned to have a leverage so that they are not put to embarrassment or their people in the country are not to be put to any difficulty. I am not going again into the details of it. A large number of countries have signed this Agreement including India. So, there should not be any doubt as to what we are likely to encounter at a later stage because all these facts have been taken into consideration.

Since it is a question of an international agreement, provisions under Section 133 have been explained properly, and the explanation is very important. The explanation under Section 133, as amended in this amending provision is: 'For the purposes of this Chapter "country" includes a group or union of the country or Inter-governmental organisation.'

The last few words are very important, namely, 'Inter-Governmental organisation.' It may not necessarily be the 'country' itself. It may so happen that we may enter into an agreement with other organisations to better our prospects. So, whenever we think of a Treaty with another country or an Inter-Governmental organisation, we have to think of the amending provisions which have been provided in Section 138. In Section 138(c), an insertion has been given keeping in view the requirements which we may face in future which says:

> "An international application filed under the Patent Co-operation Treaty designating India shall have effect of filing an application for patent under Section 7, Section 54 and Section 135, as the case may be.. "

All these facts have been taken into account. When we think of an international agreement, we have to think of the national interest itself, and when we think of the national interest, we have to think of drawbacks also. We have to think what are the drawbacks that the Patents Bill or the Patents Formula can give to us.

Firstly, about the drugs, which Shri Rupchand Pal also mentioned, yes, drugs and pharmaceutical industries will face lots of difficulties because of the research and developmental part of it which have been taken up by the developed countries. We do not have the money or the time to go into the details of these things. It may create problems for us in the initial stages. But we may overcome these things at a later stage.

15.14 hrs (Shri Devendra Prasad Yadav in the Chair)

I would definitely request the hon. Minister to indicate the manner in which we would be getting over these drug and pharmaceutical aspects and or what type of availability we can have.

Then there is a process of ever greening. What is ever greening in a Patent? A strain of patent can be taken out and a developed country or institution can say: "We have another new patent."

They will continue with that ad infinitum. So, instead of 20 year-period, which has been provided, the ever-greening will create problem for us. We have to guard against it. This Bill has not addressed itself properly to the ever-greening aspect of it. So, it is to be taken into account as to in what manner we can cut-short that ever-green aspect.

With this ever-greening aspect, there is a Bolar apprehension also. Bolar was a Senate Member of the USA. He had come up with an idea of continuing with patents by some means or the other, beyond 20 years. I do not know, in what manner we can get over this Bolar apprehension. That is to be taken into account, when we go for further amendment of the Bill, which is likely to come up. Once it is implemented, naturally, a lot of things will come up.

National interest is to be of paramount importance. We have a provision in the Bill itself for this. Along with that, we have to have this − where we keep national interest in mind, we have to keep in mind this also. Rather, we have to

elaborate it under the rules, under Section 36 of the Principal Act and Sec. 157A. Sec.36 is being amended now or which is being substituted. It says:

> "The question whether an invention in respect of which directions have been given under Section 35 continues to be relevant for defence purposes, shall be reconsidered by the Central Government."

We have given powers to the Central Government. It is absolutely necessary. At every stage, national interest has to be of paramount importance. That is why, at every stage, the Central Government has to be given powers. These have been provided in the Bill itself.

I would like to sound a word of caution. We may not be able to overcome the web that is being created by the developed countries although our Minister may be valiantly putting up our cause in the international fora. We have to be cautious here.

Before I conclude, I will only quote from Henley's famous poem '*The Invicticus*'. It says:

> "In the full clutch of circumstance,
>
> I haven't winced nor cried aloud.
>
> Under the bludgeonings of chance,
>
> My head is bloody, but unbowed."

SHRI MANI SHANKAR AIYAR (MAYILADUTURAI): Mr. Chairman, Sir, I rise to support this Bill. But I do so with a heavy heart because it so happened that when 32 years ago, the 1970-Patent's Bill was passed by this House, I was present in the Officials' Gallery as the Private Secretary to the predecessor of Shri Murasoli Maran, the late Shri Dinesh Singh. And, to have been present even if it is only in the Officials' Gallery on that occasion, was to have been present at the creation, for what Shrimati Indira Ji did in 1970 has saved this country for three decades and more, set us up as a model for developing countries all over the world to follow and given us this single most efficient public health system that world history has ever known − efficient in terms particularly of the prices at which drugs, pharmaceuticals or medicines are made available through the public health system to the people of this country.

It is, therefore, not likely but only with a very very heavy heart that one can agree to the passage of this Patents (Amendment) Bill which is the second amendment Bill, which is before us. In doing so, I would have to acknowledge that the hon. Minister was completely right in saying that the Joint Committee which looked into the original Bill, did work hard, and slaved long, to try to save whatever we could, of the 1970-system, even though the world has moved forward. We have to contend with the phenomenon called TRIPS compatibility.

In doing so, we re-wrote the whole of Chapter 16. In re-writing Chapter 16, I do not think, it would have been possible for the Members of the JPC to prevail upon the extraordinarily competent team of officials that Shri Maran has fielded against us in that Committee.

If we did succeed, it is only because there was an equally competent team of officials sitting in the Ministry of Health, who warned their own Government, who warned the Minister, Shri Maran, that the path down which he was going was a dangerous one for the public health of India, unless we went into this exercise of extensive revision. What I want to stress is that the extensive revision of Chapter 16 was completed before Doha. It was not completed as a consequence of Doha.

This was the internal story of the JPC until today but now that the report of the JPC is before us, I see no harm in revealing this truth. Only this morning's newspaper has made the outrageous claim that all the re-working of Chapter 16 was a consequence of Doha, whereas in fact almost all of it had been completed by us before. Indeed, when we came before the JPC after Doha and asked what help the claims of Doha could do to enable us to further improve the work we have already done, we were informed by the officials that Doha can increase our comfort levels but not change a word of what was written and it was really only in consequence of the meeting we had in the Minister's Chamber a few days ago that we were able to smuggled in half-a-dozen words which have increased our comfort level even further.

I say all this because I think it is essential that it goes on record of this House so that it is available to the courts when the jurisprudence on this issue is determined in the courts that it is not with great willingness or entirely of our own volition that we have got ourselves into the phase of amending the 1970 Act. It is as a consequence of international developments and these international developments have been pushed by certain commercial

interests who have a disproportionate advantage compared even to the few Indian companies that are likely to also get on to the international escalator.

I was, I must confess, a little disturbed to hear the initial statement of the Minister because he was drum-beating the cause of those Indian companies in the drugs and pharmaceutical sector who have matured to the point, both in terms of in-house technology as well as finance available to them, to become competitors in new inventions with the drugs and pharmaceutical communities of the world. But the vast majority of our drugs and pharmaceutical producers are those who have taken advantage of reverse engineering. Reverse engineering in itself is not, I submit, Sir, a matter to be denigrated because if it was such a simple matter then every country in the world would have gone in for reverse engineering. It is the genius of India that we have the ability to take a product, work backward, discover the technology by which it was made and then reveal that technology to our own producers, who are in thousands in all our little small scale units, who will then reproduce the same drug in different form but using the technology which was discovered by a process of reverse engineering. So, the Indian genius for reverse engineering should not be extinguished by the Indian genius for new engineering. There is a scope for both.

We need to take advantage of the international patents regime to become front-runners in exercise of pushing forward our own new technology but at the same time we need to recognise that if our death rates have collapsed in the manner they have between 1970 and 2002, if epidemic diseases have ceased to operate in this country between 1970 and 2002, in respect of a large number of maladies if there has been a sharp drop in the incidence of serious disease it is because of the Patents Act of 1970. If we do not exercise the utmost care, there is the danger that in respect of HIV AIDS or some other endemic we might find ourselves in India in the same situation in which South Africa found itself not so long ago.

I also think it is necessary for us to bear in mind what Shri Rupchand Pal informed us about which is that the developed countries are completely cavalier about knocking their international obligations to one side when it suits them. When this terrorist-inspired disease suddenly hit United States of America after 11th September, 2001, they completely forgot TRIPS. They threw it to one side and said: `Let us get all that is required to save ourselves even if it comes from that nasty reverse-engineering country called India'. Let us not forget that if the commercial interests, which have been behind the TRIPS, had been allowed to prevail − as they did prevail for several months − AIDS in South Africa could not have been controlled. The spread of AIDS in South Africa would have spread across the continent, and -- in this integrated globalised world of ours -- arrived in our country in a much more significant manner than has happened so far. Therefore, let us treat our TRIPS obligations with the same constructive scepticism with which the developed countries treat it. What we have to recognise is that the TRIPS obligations have to come us as part of a package of measures, which over all we felt was in the national interest but which in its specifities has adverse consequences for India unless we keep our eyes and ears very wide open. Above all to have the kind of voice that we had heard from hon. Shri Murasoli Maran from the 7th of November, 2001 until it was suddenly virtually shut down on the 14th of November, 2001. There he fought for us and I admire the way he fought for us. I say that -- whatever the aberrations of 14th November, 2001 -- we need him to continue fighting for us in TRIPS in the WTO. We can do so provided we bear very much in mind the importance not so much of defending our position at Doha on the 14th November, 2001 − as Shri Sahu attempted to do so − but to go back to the fundamental interests of India as espoused by Shri Maran himself in his opening statement at Doha. Bearing that in mind and bearing in mind, in particular, what the Minister said on the floor of the House is very much part of the records which the Supreme Court will be examining in interpreting the Act when we have just passed it and that the small voice of those of us who are on the back benches in this House might also count for a little bit in what the Supreme Court comes to the conclusion this House really meant when it passed this Act.

I will take the liberty of particularly drawing the attention and through him the House's attention to certain matters that are already there in the House. Firstly, with respect to Clause 4 and the explanation in Clause 5 where chemical processes have been defined to include bio-technological as also micro-biological, I would like him to stress to us again in this House that when we talk of chemical processes in Clause 5, we are including processes that are not normally called chemical because they are bio-chemical or bio-technological or micro-biological. I think his emphasising this will help us get the right kind of jurisprudence when the matters go to court.

Equally, Sir, in this context, I would like to stress the point made by Shri Rupchand Pal that the whole of genetics technology is in such an early phase of evolution that all of us would be well advised to go back to reading that 19th Century novel by Mary Shelley called Frankenstein. At that time, Mary Shelley had the foresight to see that scientists bemused by their own ability might create monsters over which they had no control. The same thing could happen with genetic technology.

We are seeing even today the controversy over Bt Cotton where on the one hand the immediate economic gains are so overwhelming as to want us to go into Bt Cotton, but at the same time wise technological advice coming from elsewhere in the world warns us that this short-term gain may be at the expense of the huge long-term

environmental loss. Therefore, I believe it is the duty of Shri Murasoli Maran and his successor − because we do not know how long this Government will last − Minister in charge of the patents regime to be very very aggressive in the TRIPS Council, in WTO generally, in ensuring that genetic technology is not merely seen in terms of a profit motive but its social consequences, its developmental consequences, its environmental consequences are fully taken into consideration as we move forward with the TRIPS regime; perhaps even to amending that TRIPS regime if genetic technology and its consequences warrant our doing so.

Then, I would like the hon. Minister to particularly stress in his closing remarks the importance we attach to the wording of clauses 18 and 31 relating to indigenous knowledge. We know that there had been completely illegitimate attempts made by private entrepreneurs in developed countries to take hold of knowledge that is traditional to a country like India and try to break it into some kind of a component over which they can effectively place their parent rights. They tried it with regard to turmeric, they tried it even with regard to Basmati rice. Fortunately, nothing very adverse has so far happened to us. But, it is very very necessary that the Minister emphasise our provisions in clauses 18 and 31 so that in future jurisprudence there is no doubt at all about the importance we attach to the non-patentability of indigenous knowledge, traditional knowledge and that as the TRIPS system itself evolves in the future more and more safeguards are built in for such traditional knowledge.

With regard to clause 63 which relates to Defence and national security, I do not think I will be revealing a secret if I say here that in our Committee we were told that the Ministry of Defence has cleared that language and therefore there is no problem in our going forth with it. But, other institutions particularly connected to the Defence establishment had their serious reservations as to whether this language is appropriate or not. We allow the Defence Ministry to prevail over institutions that are connected to the periphery of the Defence Ministry. But, this is a matter on which we need to continue focussing our attention especially because clause 63 specifically refers to fissionable materials. We know that there is no attempt to impose upon us a Fissionable Materials Regime under the auspices of the United Nations. At least when we had something to do with foreign policy we resisted this. In the present state of the knees of the present Government I do not know how long they will continue to resist it. But it is necessary that since the expression 'fissionable materials' specifically figures in clause 63 that it is not interpreted at any time, in any way, under any case in such a manner as to restrict our right to produce fissionable material and use it as we best deem fit.

With regard to Chapter 16, I have already drawn attention to the fact that most − virtually everything except that which was changed in the Chamber of the Minister of Parliamentary Affairs − of it had been written before Doha. I want to stress that. Therefore, at my comfort level, I would like to be risen if the Minister in his concluding remarks were to draw attention to what he believes is the Indian interpretation of the additional flexibilities granted to us by the TRIPS Public Health Declaration at Doha. That would place on record that it is the sovereign Indian interpretation of the TRIPS Public Health Document which informs our domestic jurisprudence and if there is anybody outside in the world who wishes to challenge Minister Shri Maran on that, I am sure, we will continue the argument in Geneva.

But over here, I think it is very necessary that instead of simply quoting economists or somebody else as having praised what was achieved in public health in Doha, we were to virtually get a paragraph to paragraph catechism on the part of the Minister explaining the additional flexibility which we have secured.

In particular, let me take up the expression "reasonably affordable" with respect to prices. It is mentioned in Clauses 83 and 90. Now, within our Committee, we had to argue at great length about it and I must confess that, something of a purist when it comes to the English language, I did think "reasonable and affordable" made greater grammatical sense than "reasonably affordable". What lies behind it? What lies behind it is that the TRIPS says that prices should be reasonable and the WHO has said that prices should be affordable. And we have come with this compromise that in our legislation, we should write it up as "reasonably affordable prices". I imagined that if all the other clauses have been put into this Agreement, no Supreme Court would really interpret "reasonably affordable" in a non-reasonable way or impose on us prices that are not affordable. But unless the Government and the Government counsels are extremely alert on this point and jump to the defence of the poorest Indian consumer and not the richest Indian consumer, then there is a danger that, after all the care he has taken, we have to ungrammatically arrive at the expression "reasonably affordable", and we may still lose out. It is here that I think that it is very important that the Minister and his successors ensure that any cases of public health which go to the Supreme Court are handled as matters of national interest and not in the usual manner in which standing counsel of Government handles cases just asking for some kind of a stay order and buying time. They need to be extremely alert on this. In fact, I would urge the hon. Minister, bearing this important consideration for future in mind, to immediately initiate studies which would enable us to build up a body of interpretation which, through the Supreme Court, can become a body of jurisprudence in respect of this expression "reasonably affordable prices".

Equally important is the amendment that you introduced at our insistence in the Rajya Sabha, that is, not more than adequate. It is in clause 41. That too requires, I think, a build up by ourselves as to what that expression means so

that if it gets challenged in the Supreme Court, as I expect it will be, we will be able to ensure that the jurisprudence reflects our interpretation and not the interpretation that somebody else might attempt to put on this.

Bearing this in mind, I have, therefore, four things that need to be done. Firstly, I think it is necessary that the hon. Minister give us an assurance here in this House that whatever be the achievement of the TRIPS Public Health Declaration in Doha, he will continue to strive to protect the Indian national interest especially in the public health sphere, in the TRIPS Council as well as in the WTO- and to do this - with the Minister of Health as a comrade in arms. It is a bit worrying that we have to get secret whispers into our ears from friends in the Ministry of Health, as before when we were able to revive Chapter 16. I think this Government lacks cohesion in most respects. But when it comes to such major national interest, the Minister for Industry and the Minister for Health must work in very close co-ordination to ensure that the gains of public health are maximised and the damages are minimised.

The second thing that is crucial is that it has been lacking ever since this Government came to power, that is, linking up with other developing countries. We had a very strong Group of 77 at one stage. But the nature of Group of 77 has changed over time. Several members of the Group of 77 have become in effect developed countries like Singapore. Their interest cannot be on the same level as ours. We, therefore, need to rethink on the Group of 77 and I think it was the hon. Minister himself who made a major move in this direction in setting up an informal group of like-minded countries.

It is because like-minded countries will for the most part be developing. But there might be a few developed countries also − you know stray birds or stray dogs − like the French and the British who we can pick on certain matters and bring on to our side. The group of like-minded countries would push for further improvements in the TRIPS regime − I am not talking about our domestic regime − which will enable our domestic legislation to tend more towards 1970 than to the dangers of 21st century.

The third thing that I would like the hon. Minister, in this connection, to please do is to re-examine the question of 'licences of right'. Sir, in our Committee, his officers were absolutely adamant that they just could not use the expression 'licences of right'. When we pointed out that the expression exists in the post-TRIPS U.K. legislation, we were told that the expression 'licences of right' used in England is the same as 'compulsory licences' over here in India. We have also had a reference made just now by hon. Shri Rupchand Pal to show how there is a concept of 'licences of right' built into the French regime for medicine. Therefore, I would like the Minister, who has quite correctly closed his minds to 'licences of right' so long as we did not pass the Patents Second (Amendment) Bill, to again open his mind to see how 'licences of right' can be brought into the international and national regime for drugs and pharmaceuticals before we come to the Patents Third (Amendment) Bill.

That, Sir, brings me to the fourth point, which is the Patents Third (Amendment) Bill. I was disappointed that in his opening statement, the Minister did not give us the assurance that there will be a Patents Third (Amendment) Bill at the time that product patents are be brought in for drugs and pharmaceuticals. We must remember that all references to patents in this Bill, as they apply to drugs and pharmaceuticals are for process patents only and not for product patents. Some of the remarks that we had from Shri Sahu showed that there is some confusion in the ranks behind Shri Maran as to whether or not this Bill applies to product patents for medicines.

SHRI ANADI SAHU (BERHAMPORE, ORISSA): Amendment in Section 53 of the principal Act does not make any difference between product and process patents. That has been taken care of in Clause (1).

SHRI MANI SHANKAR AIYAR : Mr. Chairman, Sir, I do not wish to get into an argument with Shri Sahu. I leave it to Shri Maran to get into an argument with Shri Sahu.

There is a major achievement so far that patents in the sectoral drugs and pharmaceuticals apply as of now only to processes. We will have to come into a products regime for drugs and pharmaceuticals, not immediately, but by 2005. It is at that stage that problems of 'ever greening', problems relating to the Bolar amendment, and problems relating to molecules as well as different dosages to deal with different kinds of diseases will become highly significant.

I, therefore, seek to bring to the attention of the hon. Minister the apprehension of the drugs and pharmaceuticals sector that simply by some kind of an Executive Order in 2005, product patents will be introduced for drugs and pharmaceuticals. To be absolutely certain that that will not happen and that we will all have an opportunity of carefully examining product patents for drugs and pharmaceuticals on their own at that time, possibly through a JPC which might take just as long as this one has done, the Minister gives us an assurance that on or before the date on which the TRIPS regime becomes applicable for us in respect of product patents for drugs and pharmaceuticals, he or his successor will bring before this House the Patents Third (Amendment) Bill.

SHRI MURASOLI MARAN: That has to be brought in. Probably, I have said it. ...(*Interruptions*) I will reply to that.

SHRI MANI SHANKAR AIYAR : I may have misheard it. From what I heard, there was no specific assurance that a Patents (Third Amendment) Bill would be brought forward. I know that the hon. Minister's intention is to bring forward such a Bill. I fear that he will not be the Minister by the time it has to be done. Therefore, it is essential that he must give us this assurance on the floor of the House now. In the interim, if anybody goes to the Supreme Court interpreting this Act to mean that it covers process patents in drugs and pharmaceuticals, the Supreme Court will tell him that it does not and he will have to wait for the Patents (Third Amendment) Bill before we move to product patents for drugs and pharmaceuticals.

I just wish to conclude by drawing attention to two tiny mistakes of a grammatical kind which need to be corrected. One is in clause 4, page 3, line 11. The word "to" has been dropped by mistake. It should be incorporated. The word is required. The phrase should read: "contrary to public order". Here, it reads "contrary public order". So, obviously the two letters "t" and "o" have been left out by mistake. I would urge that in the corrigendum, this should be corrected.

Equally, in clause 10, page 6, line 21, there is an inverted comma that should be put before the word "specification." It does not exist at the moment. That is also required as a corrigendum.

With these words, I thank you very much for having given me this opportunity. I conclude.

श्री सुबोध मोहिते (रामटेक) : सभापति महोदय, सदन में पेटेंट विधेयक पर चर्चा चल रही है। पेटेंट-लॉ चाहिए या नहीं, यह एक बहुत ही स्पैसिफिक विाय है और चर्चा का विाय हो सकता है। इन्टरनेशनल आब्लिगेशन में हमारी मजबूरी है और इसको ध्यान में रखकर ही हमने इस कानून को इन्ट्रोड्युस किया है और प्रमोट कर रहे हैं। पेटेंट-लॉ के पीछे धारणा यह है कि इस कानून से कितना फायदा होगा या कितना नुकसान होगा। इसलिए यह एक चर्चा का विाय बन सकता है। मैं यह भी कहना चाहूंगा कि यह चर्चा का विाय इसलिए भी बन सकता है, क्योंकि most of the inventors are multi-national companies. राज्य सभा में दिए गए एक भााण में कहा गया है - 80 per cent of the total Patent has been acquired by multi-nationals. इसलिए चिन्ता की बात यह है कि देश को पेटेंट लॉ से कितने फायदे होंगे और कितने नुकसान होगे। यह मैं पहले ही कह चुका हूं कि पेटेंट लॉ एक अलग विाय है। आज जो हम जिन्दगी जी रहे हैं, वह जिन्दगी किस तरह से मल्टीनेशनल्स पर डिपेंडेंट है, उसका एक छोटा सा उदाहरण देना चाहता हूं। मैं सच्चाई आपके सामने रखने की कोशिश कर रहा हूं कि मल्टी-नेशनल्स किस तरह से हमारी जिन्दगी पर हावी हो गए हैं। आम तौर पर व्यक्ति सात बजे उठने के बाद सबसे पहले टूथ-ब्रश करता है। वह टूथ-ब्रश मल्टीनेशनल कम्पनी का होता है। इसके बाद टूथ-पेस्ट जो हम प्रयोग में लाते हैं, कॉलगेट या फॉरहैन्स, वह भी मल्टीनेशनल कम्पनी का होता है।

आठ बजे जब हम चाय पीते हैं, वह भी मल्टीनेशनल कम्पनी की लिप्टन या ब्रुकबोंड होगी। नौ बजे हम नाश्ता करते हैं, उसमें भी मल्टीनेशनल कम्पनी की मेगी या अन्य कुछ खाएंगे। एक बजे के खाने में जो नमक खाएंगे, वह भी मल्टीनेशनल कम्पनी का होगा, क्योंकि हमारे देश में हमारी कम्पनी नमक नहीं बना सकती। आप टी. वी. पर एक एडवरटिज़मेंट देखते होंगे कि - "लिखते-लिखते लव हो जाए रोटोमैक कम्पनी का पैन।" इस प्रकार से हम अपनी जिन्दगी में जो चीजें लेते हैं, उनमें से ज्यादातर मल्टीनेशन कम्पनी की ही होती हैं। चार बजे जब हम पार्लियामेंट में पेप्सीकोला पीएंगे, वह भी मल्टीनेशनल कम्पनी का ही होगा। आठ बजे घर पहुंचने के बाद टी.वी. पर मनोरंजन की चीजें देखेंगे तो उसमें भी 90 प्रतिशत चैनल मल्टीनेशनल ही होंगे। कपड़ा भी हम इम्पोरटेड ही पहनेंगे।

महोदय, मैं यहां एक उदाहरण दे रहा हूं, जो पेटेंट लॉ से रिलेटेड नहीं है, लेकिन मल्टीनेशनल कम्पनी के ऊपर हमारी जिन्दगी कैसे डिपेंडेंट हो गई है, उसका मैं एक यूनिक उदाहरण आपके सामने रखने की कोशिश कर रहा हूं। इस पेटेंट लॉ से मुझे जो सबसे भयंकर खतरा नजर आ रहा है, सबसे अहम् बात है, वह लाइफ सेविंग ड्रग्स और एड्स की सबसे महत्वपूर्ण बात है। यहां मैंने सबसे महत्वपूर्ण बात यह नोट की कि जो गेम प्लान चल रहा है, आप देखेंगे कि आज जो प्रोबल्म ऐरियाज़ हैं, आप जब इंटरनेशनल लेवल और आब्लीगेशन की बात कर रहे हैं तब एक खास बात यहां सब लोग नोट करेंगे कि जो प्रोबल्म ऐरियाज़ हैं, वे डेवलपिंग कंट्रीज़ हैं। सबसे ज्यादा प्रोबल्म डेवलपिंग कंट्रीज़ हैं और इस प्रोबल्म का जो सोल्यूशन है, वह डेवलप कंट्रीज़ के पास है। मैं इस पर दूसरे शब्दों में बोलना चाहूंगा, the developing countries are totally dependent on the developed countries. इस सिचुएशन और बैकग्राउंड में हम यह बिल पास करने जा रहे हैं। मेरा सबसे पहला सवाल यह है कि जो सिचुएशन डे टू डे लाइफ की रखी है, जो प्रोबल्म प्रोन और सोल्यूशन ऐरियाज़ हैं, उन्हें किस तरीके से डिफाइन किया है। इस सिचुएशन और बैकग्राउंड में यह लॉ हमें कितनी एडवांटेज़ या डिसएडवांटेज़ देगा, यह एनालाइसिस करने की बात है। मैंने मुरासोली मारन की स्पीच राज्यसभा की भी पढ़ी। उन्होंने कुछ प्वाइंट दिए हैं, उन्हें मैं आगे बताऊंगा। ये सब बातें ध्यान में रखते हुए लॉ में यह प्रोविज़न होना जरूरी है। हम यहां पेटेंट लॉ के अमेंडमेंट की बात कर रहे हैं। मैं यहां छ: क्रिटिकल प्वाइंट रखना चाहता हूं। अगर ये छ: प्वाइंट हमें पेटेंट लॉ के हिसाब से लाभ दे सकते हैं तो यह लॉ सही मायने में हमारे नेशन की सिचुएशन को फेवर करेगा, ऐसा मुझे लगता है। पहला प्वाइंट यह है, national interest, national security, public interest, national importance, protection of bio-resources, public health and food security of the poor people .

महोदय, मैं इन सातों प्वाइंट्स पर ज्यादा इलेबोरेट नहीं करना चाहूंगा, अगर चाहूं तो कर सकता हैं। अगर ये सातों प्वाइंट लॉ में पूरी तरह से कवर होते हैं तो मुझे लगता है कि we will be successful in passing the Patent Law in Parliament. मैंने जैसे कि पहले भी बोला कि यह बड़े वाद-विवाद का डिबेट का मुद्दा हो सकता है । पेटेंट लॉ के एडवांटेज़ और डिसएडवांटेज़, Patent Law is a very complex subject with larger implications on the Indian society. मैं इस पर ज्यादा भााण नहीं करना चाहूंगा, क्योंकि मैंने जो रिकार्ड देखा है, इस पर कंट्री लेवल पर बहुत से सेमिनार हुए हैं। इसके ऊपर काफी वर्कशॉप, कंसलटेशन हुए हैं। एमपीज़ की कमेटी में भी बहुत सारे विचार-विमर्श यहां रखे गए हैं। कई मुद्दों पर यूनिफाइड स्ट्रेटजी भी हुई हैं। यहां जो कंसेंसस रखे गए हैं, वे सामने आएंगे ही, मैं यहां एक खास बात बोलना चाहूंगा, हमारी पहली प्रायोरिटी यह है, मैंने जो ओवरऑल पिक्चर बताई कि इसमें सात प्वाइंट कवर होने चाहिए। उसमें जो पहली प्रायोरिटी है, मैं उसे फर्स्ट एंड फोरमोस्ट प्रायरटी कहूंगा, वह ड्रग्स एंड फार्मास्युटिकल की है। यहां मणिशंकर जी ने कहा है, फर्स्ट प्रायरटी ड्रग्स एंड फार्मास्युटिकल की है। आप लास्ट ईयर या लास्ट मंथ में देखिए, एड्स का जो रेट ऑफ ग्रोथ है वह एलारमिंग रेट से भी कहीं ज्यादा है।

लास्ट वीक प्रधान मंत्री जी भी बहुत चिंतित थे और उन्होंने एक सेमिनार में कहा कि मैं एक प्लॉन बनाऊंगा और उन्होंने स्टेटमेंट दिया कि

"The availability of drugs and medicines at affordable prices is a question of human right."

इस वाक्य में उन्होंने सब कुछ कह दिया है और हमारे माननीय प्रधान मंत्री जी की कमिटमेंट इसमें दिखाई देती है। मैं समझता हूं कि लाइफ-सैविंग्स ड्रग्स की बॉटम-लाइन प्राइस के मुताबिक फिक्स होनी चाहिए। कानून में भी यह प्रावधान है। इस तरह की अपेक्षाएं पेटेंट लॉ में होनी चाहिए। यहां पर कुछ कॉमन कंसेंसस पर हम आये हैं जिसमें सबसे पहला मुद्दा यह है कि पेटेंट लाइफ 20 वर्ा की होनी चाहिए। लेकिन मिनिस्टरी ऑफ कॉमर्स ने प्रत्यक्ष या अप्रत्यक्ष रूप से कमिट किया है कि 20 वर्ा की पेटेंट लाइफ रिड्यूस करने के लिए डब्ल्यूटीओ के स्तर पर हम प्रयास करेंगे।

दूसरी बात कई सदस्यों ने उठाई है कि रॉयल्टी-रेट 3 प्रतिशत, 4 प्रतिशत या 10 प्रतिशत होनी चाहिए। लेकिन इसमें एक बात और भी है कि मल्टी-नेशनल्स इसको 20 प्रतिशत करके 100 प्रतिशत भी कर सकती हैं। एक कंसेंसस अच्छा हुआ है कि फिक्स रेट करने के बजाए

There a variable rate. There is a provision of variable rate that will be decided by the Controller of Patents on a case-to-case basis. मुझे लगता है कि ये जो दो प्रावधान हैं ये अच्छे हैं। मेरा आखिरी निवेदन है कि हम जो बिल पास कर रहे हैं और इसकी जो भावना है वह पेपर पर ही नहीं रहनी चाहिए और इसमें हमें बड़ी सावधानियां लेनी पड़ेंगी। पेटेंट लॉ सिस्टम की कमियों को हमें पूरी तरह से मॉनिटर करना पड़ेगा और उन्हें दूर करना पड़ेगा, जिससे सही मायने में गरीब जनता को स्वास्थ्य सिक्योरिटी, आर्थिक सिक्योरिटी और इंटिलैक्चुअल सिक्योरिटी मिले। भविय में इनके प्रति भी हमें सा वधानी रखनी होगी। यही निवेदन माननीय मंत्री जी से करते हुए मैं इस बिल का समर्थन करता हूं।

डॉ. रघुवंश प्रसाद सिंह (वैशाली) : सभापति महोदय, यह जो विधेयक लाया गया है इसको पूरी तरह देखने के बाद एक भी शब्द इसमें नहीं मिलता है जिससे कहा जा सके कि यह एक अच्छा विधेयक है। लगता ऐसा है कि यह इंटरनेशनल ऑब्लिगेशन है, हमने दस्तखत कर दिये हैं और इंटलैक्चुअल प्रॉपर्टी राइट और ट्रिप्स वाला जो क्लॉज है, इसलिए हमें इसे मानना है। कितना भी कोई पक्ष में बोले लेकिन यह दावा नहीं कर सकता कि हिंदुस्तान के लोगों को इस विधेयक से लाभ है। यही कहा जा सकता है कि लाचारी है और हम ट्रिप्स या डब्ल्यूटीओ के चक्कर में पड़ गये हैं। महोदय, यह बहुत भारी साजिश है। इसमें कोई कहे कि 1970 का जो पेटेंट कानून है वह दुनियाभर में आदर्श कानून है, कोई नहीं कह सकता। उसके चलते सारे संसार में दवा की खपत सबसे ज्यादा हिंदुस्तान में है। उसमें भी सबसे ज्यादा खपत बिहार में है और बिहार में भी सबसे ज्यादा खपत उत्तरी बिहार में है। हिंदुस्तान में 4 करोड़ 80 लाख लोग मधुमेह से पीड़ित हैं, 4 करोड़ लोग दमा से और 4 करोड़ लोग हैपीटाइटिस-बी से पीड़ित हैं। विकसित आबादी से ज्यादा लोग तो हमारे यहां बीमारियों से पीड़ित हैं। उनसे हमारी तुलना क्यों करते हैं? अब पाकिस्तान में दवा कितनी महंगी हैं।

16.00 hrs.

अमेरिका में दवाइयां बहुत मंहगी हैं। जब कोई एनआरआई यहां आता है तो हम उससे कहते हैं कि यहां से अनाज, चना ले जाओ लेकिन वह कहता है कि मैं यहां से दवाइयां ले जाऊंगा। दुनिया भर के मुल्क, मल्टीनेशनल कम्पनियां और विकसित देश मिल कर ाड्यंत्र कर रहे हैं। वे सोचते हैं कि हिन्दुस्तान में कैसे दवाइयां सस्ती मिलती हैं जबकि हिन्दुस्तान गरीब मुल्क है। आज गरीब आदमी महंगी दवाइयां खरीद नहीं सकता है। सरकार लाचारी में यह कह रही है कि इंटरनेशनल ऑबलिगेशन्स हैं। कहीं-कहीं सरकार यह दावा कर रही है कि डबल्यूटीओ पर दस्तखत करने से जो खराबी पैदा होने जा रही थी, उससे हम बचाव करने जा रहे हैं। इसे लाने की क्या आवश्यकता है? आपने इस पर जो दस्तखत किए जबकि हिन्दुस्तान के लोगों को इस बारे में पूरा पता नहीं है। दोहा में इस पर बहुत बहस हुई। आगे भी इस पर बहस होगी। इससे कोई राहत नहीं मिलेगी। पहले एक जनवरी 1995 को, फिर एक जनवरी 2000 को इस पर दस्तखत किए गए। अब अगली एक जनवरी 2005 को आप इस पर दस्तखत करेंगे। तीन स्टेजेस में इसे लाया गया जो कि एक खतरनाक बात है।

महोदय, मैं देख रहा हूं कि इस पर सभी माननीय सदस्य बड़े मुलायम तरीके से बोल रहे हैं जबकि इससे बहुत खतरा है। हाल में दुनिया के दूसरे मुल्क इसे बर्दाश्त नहीं कर रहे हैं और इसके खिलाफ लड़ने के लिए तैयार हैं। ब्राजील इसके खिलाफ लड़ने के लिए तैयार है। हिन्दुस्तान को चाहिए कि वह सामान्य स्थिति के मुल्कों को एकजुट करके इसके खिलाफ फाइट करे। मल्टीनेशनल कम्पनियां और सम्पन्न मुल्क हिन्दुस्तान को देख कर जलते हैं। हिन्दुस्तान को चाहिए कि वह उनके ाड्यंत्र को विफल करे। आपको ऐसा विधेयक यहां नहीं लाना चाहिए और उसका विरोध करना चाहिए। लाचारी इसका कारण बता कर देश का अहित होगा जो उचित नहीं है।

हमने एक बार सुना कि बासमती का पेंटट हो गया। हमें इसे लेकर लड़ना पड़ा लेकिन उन्होंने बासमती को नाम बदल कर टैक्समती कर दिया। इसके पीछे भी बहुत भारी ाड्यंत्र है। हमारे यहां आंवला, हरड़, बहेड़ा, हल्दी नीम आदि जड़ी बूटियां हैं। जब लक्ष्मण को बाण लगा, उस समय भी हमें लगा कि पेटेंट जैसी कोई बात थी। रा वण के यहां सुोण वैद्य थे, हनुमान से कहा गया कि वह सुोण वैद्य को ले आएं। वह उन्हें उठा कर ले आए। उसने कहा कि धौलगिरी पर्वत पर संजीवनी बूटी है, उसे लेकर आ जाएंगे तो वह बच जाएंगे। वहां से संजीवनी बूटी लाई गई और वह बच गए। उस समय भी लगा कि उन्होंने उसे पेंटेंट करा कर रखा था और भेद बता दिया। बाणभट्ट, चरक, निघंटु में जड़ी-बूटियों का वर्णन है। इसकी सुरक्षा कैसे होगी? हिन्दुस्तान में गन्ने की खेती पहले शुरु हुई। दुनिया के मुल्कों ने इसके बारे में हम से सीखा। राजा इक्ष्यांकु ने ब्रह्मा जी से इस बारे में मांगा तो उसका नाम ऊख, ईख पड़ा। शूगर केन तो इसका बनावटी नाम है। इसका कोई दूसरा नाम नहीं मिला और शूगर केन नाम रख दिया जबकि केन के मायने छड़ी होता है। जहां से शूगर निकले, इसलिए उसका नाम शूगर केन रख दिया। हमारे पुरखों ने गन्ने की खेती शुरु की। अब इसे विभिन्न नामों जैसे कितयारी, कुशयारी, ऊख, ईख, गन्ना आदि नामों से पुकारा जाता है।

उसी तरह से आम और लीची हैं। हमने सुना है कि नीम का पेटेंट हो रहा है तथा विभिन्न जड़ी-बूटियां हैं। इन नामों का पेटेंट हो रहा है। इस खतरे से बरी करने के लिये सरकार के पास क्या इलाज है? गांवों मे हमारी ट्रेडीशनल मैडिसिन्स हैं जिससे करोड़ों ग्रामीण लोग अपनी बीमारी का इलाज जड़ी-बूटियों से कराते हैं। हमारे यहां कढ़ी बनाते हैं जो दही और बेसन से तैयार होती है। हमने सुना है कि जापान उसे पेटेंट करा रहा है। इस तरह से यह ाड्यंत्र चल रहा है। यह बात सब लोगों को मालूम है लेकिन हम लाचार हो गये हैं। महाभारत में दुर्योधन की सभा में पांचों पांडव बैठे हुये थे, जुल्म हो रहा था क्योंकि लाचारी थी। लेकिन आज क्या लाचारी है? आज जनता के हित की ट्रेडिशनल कल्चर की वे चीजें हैं जिस में वे कैसे दखल देकर ाड्यंत्र कर लेंगे?

सभापति महोदय, हमारे यहां पहले पेटेंट कानून, 1970 था जिस में यह अवधि 5 से 7 वर्ा तक की है, लेकिन अब सुना है कि उसे 20 वर्ा किया जा रहा है। ऐसा भारी जुल्म क्यों किया जा रहा है जिससे हमारी सौवरैंटी पर हमला हो रहा है। हमारे यहां प्रोडक्ट पेटेंट था जिसे अब प्रोसीजरल पेटेंट कराया जायेगा, इससे कितना भारी खतरा होगा। 5-7 साल की अवधि वाला कानून 20 वर्ा के लिये कराया जा रहा है। फर्ज कीजिये किसी दवा कंपनी या वैज्ञानिक या फार्म्युसिटिकल कम्पनी ने अनुसंधान किया और उसे5-7 साल तक पेटेंट करा लिया तो 5-7 साल तक उसकी मोनोपोली रहेगी। वह कम्पनी ऊंची कीमत पर मनमाने ढंग से दवा बेचेगी और लोग खरीदेंगे । जब फ्री हो जाती है तो विभिन्न कम्पनियां बनाना शुरु करती हैं और कम्पीटीशन करने के बाद भाव कम हो जाता है। इसी तरह मियादी बुखार के लिये क्लौरोमाइसिटिन एक कैमिकल ग्रुप बनाता है। पहले मियादी बुखार 21 दिन या 51 दिन तक रहा करता ता लेकिन जब पेटेंट कानून शुरु हुआ तो उसकी एक गोली 76 रुपये में आती थी लेकिन जब पेटेंट से फ्री हुयी तो उस गोली का दाम केवल एक रुपया रह गया। इस तरह उसका लाभ होता है। सरकार कहती है कि विदेशी पेटेंट कानून हमारे यहां 20 सालों तक के लिये पेटेंट हो जायेगा। 20 वर्ाों में तो हमारे यहां गरीब आदमी मर जायेगा।

सभापति महोदय, आज देश में 4 करोड़ लोग हैपेटाइटिस-बी के कीटाणुओं से पीड़ित हैं। उसकी एक सुई का दाम 1600 रुपये है जो रोज लगातार 4 महीने तक लेनी पड़ती है। गरीब आदमी तो भगवान भरोसे ही है, वह इसका दवा कहां खरीद सकता है। यदि वह 50 साल तक भी रहता है तो सरकार से कुछ मदद ले सकता है और गरीब आदमी को बचाया जा सकता है। यह इस तरह का एक खतरनाक विधेयक है लेकिन आप कह रहे हैं कि ठीक है, इंटरनैशनल औब्लिगेशन है। अगर कोई

लिखकर जायेगा कि देश गुलाम हो जायेगा तो क्या हम मान लेंगे? पुराने जमाने में यदि राजा हार जाता था तो देश हार जाता था लेकिन अब वह युग नहीं रहा। आज जनता है, जनतंत्र है । हम लोग हार मानने वाले नहीं हैं। यदि ये लोग दस्तखत कर देंगे तो हम नाजायज बात मानने के लिये तैयार नहीं हैं। इसलिये हमारी सरकार से मांग है कि वह मामला साफ करे।

सभापति महोदय, ब्राजील और कई देशों ने मांग की है कि इस पेटेंट कानून को पब्लिक हैल्थ के नाम पर फ्री कर दिया जाये ताकि दवा महंगी न हों और अमरीका की तरह पाकिस्तान तथा हमारे यहां गरीब आदमी उससे इलाज करा सके। इसलिये हमें गारंटी चाहिये कि हमारी टदेडीशनल प्रोडक्ट्स वैसे हीरहेंगे।

सभापति महोदय, दुनिया में कोई मुल्क ऐसा नहीं है जहां एक भेड़ एक बार में दो-तीन बच्चे देती हो। वह सिर्फ हिन्दुस्तान है जहां एक बार में एक भेड़ दो या तीन बच्चे देती है। उसका जर्म प्लाज्म यहां से चुराकर ले गए और अमरीका में उसे पेटेंट करा दिया। इसी प्रकार इस देश में बकरियों की ऐसी-ऐसी नस्ल पाई जाती हैं जो एक बार में तीन-चार बच्चे देती हैं। किसी दूसरे मुल्क में ऐसी ब्रीड नहीं पाई जाती है, लेकिन उसका भी जर्म प्लाज्म चुराकर ले गए। इसी प्रकार हमारे गुजरात की जाफराबादी भैंस है, जो दुनिया के किसी मुल्क में नहीं पाई जाती है, लेकिन उसका भी जर्म प्लाज्म चुराकर ले गए और वहां पेटेंट करा दिया।

महोदय, हमारी सब पुरानी और बढ़िया चीजों के जर्म प्लाज्म वे यहां से चुराकर ले जाते हैं और अमरीका में पेटेंट करा देते हैं, यह ठीक नहीं है। जितनी भी हमारी पुरानी और जैविक चीजें हैं, जो हमारी ओरिजिनल चीजें हैं, जो हमारे पुरखों ने अनुसंधान कर के पैदा कीं, जिनकी नस्ल सुधारी और उन्हें उन्नत किस्म की बनाया, उन सबको अमरीका वाले यहां से चुरा-चुरा कर ले जा रहे हैं और वहां पेटेंट करा रहे हैं। बासमती चावल का पेटेंट, हल्दी का पेटेंट, आंवला, हर्र, बहेड़ा, सुखंड, गुडीज, वनकशा आदि अनेक ऐसी जड़ी-बूटियां हैं, जो यहां पैदा होती हैं, दुनियां में कहीं पैदा नहीं होतीं, लेकिन उन्हें यहां से वहां ले जाकर उनका पेटेंट अपने यहां करा लिया। इस प्रकार की बातें सुनकर हम आश्चर्य चकित हो जाते हैं।

महोदय, हमारे यहां जो ज्यादा होशियार आदमी हैं, वे अपनी राय देते हैं। देश-विदेश के लोगों से इनके बारे में सुनकर हम आश्चर्य चकित रह जाते हैं कि हमारी पुरानी चीजों के, दवाओं के, जड़ी-बूटियों के जर्म-प्लाज्म यहां से ले जाकर वहां पेटेंट करा लिए जाएं, यह घोर अन्याय है। मैं कहना चाहता हूं कि हमारी पुरानी चीजों की सुरक्षा होनी चाहिए।

महोदय, पेटेंट पहले से था, लेकिन अब इस विधेयक के माध्यम से प्रासीजर को पेटेंट किए जाने का कानून बनाया जा रहा है। हम पहले से ही कह रहे हैं कि कुछ इधर, कुछ उधर कर, नई दवाओं का निर्माण किया जाता है। अब किस तरह से दवा बनी है, इसका पेटेंट हो जाएगा। मल्टी-नैशनल्स की मौनोपोली हो जाएगी। वह प्रासीजर खरीद लेगा, दवा बनाएगा और हम से दवाओं के मनमाने दाम वसूलेगा। लाइफ सेविंग ड्रग्स, एच.आई.वी. या एड्स जैसी अनेक बीमारियों में काम आने वाली दवाएं भी हमें नहीं मिलेंगी। विदेशियों की इसी साजिश की वजह से देश में एड्स और एच.आई.वी. की बीमारियां अंधाधुंध बढ़ रही हैं।

महोदय, जिस प्रकार से मुरासोली मारन साहब ने दोहा में लोहा लिया और भिड़े थे, वैसे ही हमारा निवेदन है कि यहां भी हम पूरी ताकत के साथ उनका विरोध करें। हम दुनिया का छठा भाग हैं। हमारे बिन दुनिया में कोई दूसरा काम नहीं हो सकता। इस ताकत के साथ वहां पर गरजने का काम करिए। हम लोग आपके साथ हैं। भारत के हितों के साथ कोई समझौता नहीं हो सकता। गरीब आदमी के हितों से कोई समझौता नहीं हो सकता। जो हमारी ट्रैडीशनल और पुरानी चीजें हैं, जो हमारी कल्चरल चीजें हैं, उन्हें हम छोड़ने को तैयार नहीं हैं। उन्हें हम किसी को नहीं देना चाहते हैं। इतना कहकर मैं अपनी बात समाप्त करता हूं।

16.14 hrs.

SHRI KHARABELA SWAIN (BALASORE): Sir, I rise to congratulate the hon. Minister of Commerce and Industry for piloting such an excellent Bill.

I was also one of the Members of the Joint Committee of Parliament on Patents Bill. We had deliberated over the Bill for about more than one-and-a-half years. Ultimately, I can, with all my forthrightness and all my belief, say that we have not done anything that would go against the interests of this country.

The way some hon. Members argue, it seems as if patenting is the requirement of multinationals.

The patent is the requirement of only the foreigners!

Sir, do we not require a Patent Bill for the Indians? Do we not require a good Patent Bill for our scientists? Do we not require a Patent Bill for our Reddy's laboratories? Do we not require it for Ranbaxy, which are Indian companies, the companies that have spent lots and lots of money for research and development and for inventing new Indian drugs? If we cannot protect it with a good Patents law, then it is the foreigners who will copy it within a very short period. Then what will happen to us? Always it is to think that we are poor, that we do not have the intelligence to compete with the foreigners; I think, rather it is a mind-set infested with poverty. We have to get rid of that.

Sir, we require it. Shri Mani Shankar Aiyar has said highly about reverse engineering. He said, it requires a sort of great ingenuity, which only the Indians have. I support it to an extent. But can we say that reverse engineering is a great credit, and research and development is not; new inventions and innovativeness is not?

Sir, there is a word in English that is called `improvisation'. I know the Indians are masters of that. But improvisation is not excellence. What India requires to become a world power is the excellence, not improvisation. Improvisation is *chalu mal*, you can just manage it somehow. But improvisation is not that where you can prove yourself to be the best. So, we

require this legislation.

Sir, we agree that it is a TRIPS compliant Bill. As the hon. Minister told earlier, either you take it or you leave it. You cannot say that this portion of the Bill we can take and this portion we will leave because we do not like it. The TRIPS agreement, which he has already told us that you change it as per your national requirement. We have done it. We have brought in the compulsory licensing. If there is a refusal to the Bill, if there is an emergency, if there is an anti-competitive price and if the Government wants to use it for the poor, if there is a lack or insufficiency of working of the Patents, then the Government can give the compulsory licensing to somebody else. They can go for parallel import and they can also go in for indigenous production. Everything could be done. So, it is not that the interest of the nation has not been looked after. It has been looked after. We say, why do we give it for 20 years' time. We just say that the Patent is for 20 years, but, actually, it is not for 20 years. The day you file a patent application, sometimes it takes 10 to 12 years to get the patents rights. Hardly, eight years is got by some patent holder or some patent applicants to get the fruit of his patent. The day you develop a molecule and you go for a patent from that day, it takes about some ten years. Out of about 1,000 molecules developed, hardly two to three ultimately would fructify to a drug. It is not that every molecule gets developed into a drug. But if you patent a molecule, ultimately it is the drug, which will come.

Sir, I can just say that we have so many provisions in this Bill.

In Clause 4, in the interest of the nation, we have provided for non-patenting of any living or non-living substance occurring in the nature; we have provided to exclude the plants, the animals other than the micro-organism in the whole or part of it, from patenting; we have also kept from the region of patenting, the fruits of traditional knowledge, the fruits of oral tradition. If there is an oral tradition in a village, that can also not be patented. But somewhere when we raise the question of *haldi* or *neem* being patented in other countries, then what happens? These are the Indian people. They have settled down in America. They have only understood what is *haldi* and what is *neem,* and they patent it. And while patenting *basmati,* or *haldi* or *neem,* what do they say? Sometimes they say that we have got the source from Pakistan, we have got the source from Nepal, we have got the source from Bangladesh. And because Bangladesh, Nepal and Pakistan are all in one geographical area, sometimes they try to deceive also. It is not that *basmati* rice is produced only in India, it is also produced in Pakistan. Shri Mashelkar, Director, CSIR had told that when *haldi was* patented in America, we went to the Appellate Tribunal, and when the Americans were told that *haldi* is actually a traditional knowledge in India and how they had given a patent for it, they said, they did not know that.

Why do you not have a data base? You should have a data base of our traditional knowledge. Put it in the computer, put it in the Internet so that whenever somebody applies for it, we can go through the computer, we can go through the data base, and if it is there, then we will not give the patent. So, the fault lies with us because we have not been able to produce a data base of our traditional knowledge. Now the Government is doing it and I would request the hon. Minister that he should go in for it. So, I fully support it.

Finally, I would come to the point with regard to the licence of right. I know that the Minister has to go, so I shall complete it within one minute.

My concluding point is with regard to the licence of right. The licence of right provision was available in the original Act of 1970. This has been removed because this is not TRIPS-compliant and this is discriminatory because when you give a compulsory licence to somebody, it should be on a case-to-case basis. But what provisions do we have in the licence of right? It is that after three years, without asking for anything, you can give the licence of right to anybody else who has not even invented it. The main thing is why somebody is inventing something. He is inventing it because he wants to put it to commercial use. He wants to get back his investment. So, if we give the licence of right without asking for anything, if we give the licence of right to anybody, there will be no meaning in having a patents right at all. So, it is very good that that has been removed and the compulsory licensing provision has been made in its place.

With this, I congratulate the hon. Minister for piloting such a Bill which has already been passed in the Rajya Sabha. I would appeal to all the Members of this House to pass it unanimously because there is nothing in this Bill which is against the interests of the nation.

श्री श्यामाचरण शुक्ल (महासमुन्द) : सभापति महोदय, वैसे मैं हिन्दी में बोलना पसन्द करता हूं लेकिन आज के विाय में यह बहुत ही आवश्यक है कि मंत्री जी हमारी बातों को अच्छी तरह समझें। यद्यपि अंग्रेजी में इसका ट्रांसलेशन जरूर होगा, फिर भी मैं अंग्रेजी में बोलूंगा। हमारे दोनों हाउसेज़ की एक ज्वाइंट कमेटी थी।

They have worked for about 23 sittings. They went into very great details of every clause which was proposed in the new legislation. The ideal situation would have been that we would have not brought about any amendment at all because our Act of 1971 is very comprehensive and very complete so far as our national interest is concerned. The present legislation has been brought because we have signed WTO and we are supposed to become TRIPS Agreement compliant.

Now, in regard to this whole legislation, in the long discussions we had in the Joint Parliamentary Committee, three concerns were most prominent. The first one was to protect the indigenous traditional knowledge because once this Act comes into force, the patents in America will become effective in our country also. This is first time that our country will be having a legislation in which we are extending rights to overseas citizens. This is in the new regime. How the old concept of sovereignty cannot be fully stuck to in the new circumstances! But we have to be careful as to how far we can be pushed. We are a sovereign nation. This Parliament is sovereign. We do not have to bother

about TRIPS, we do not have to bother about WTO so long as it does not vitally affect our basic national interest.

Now, the traditional knowledge of this country is very well known and the whole world is coming around to the alternate system of medicines, that is, Ayurvedic medicines. The knowledge of Ayurvedic medicines is thousands of years old. So, our attempt was that the advantage of this knowledge should not be taken by anybody sitting in America and saying that they have isolated some colloids in the known medicines. Now, very recently, we have read an article in the newspapers that *Yograj Goggul* has been analysed and it has been found very effective in reducing the cholesterol. Now, *Goggul* has been used in our country by *vaidyas* and our Ayurvedic practitioners for thousands of years. Now, they may say that it is in scientific language and in those days, cholesterol was not known and cholesterol was not measured and they were only having their fingers on the pulses of the patients and knowing what was happening. So, if they take advantage of this kind of things and take out the patent, then we have to pay for it though it is only a derivative from *Yograj Goggul*. They have only isolated some colloids. There may be two or three colloids in that known plant or medicine. So, I am glad that in the discussion on this Bill in Rajya Sabha, the hon. Minister has agreed to certain amendments by which the traditional knowledge angle has been taken care of, but I would suggest that if you want to fully really meet the situation, the language contained in the proposed clause 4 should be amended. I have proposed a very small amendment in that clause which seeks to make some additions to section 3 of the principal Act, to protect the traditional medicines. A sub-section (p) is proposed to be added to section 3 of the principal Act, which reads :

> "An invention which, in effect, a traditional knowledge or which is an aggregationâ€¦"

This is the wording. If it is said "An invention which, in effect, is derived from traditional knowledge or which is an aggregation â€¦", then, it will completely shut out the possibility of having any such patents which may be taken out and which we claim because the new definition of patent in our own Bill, which has been adopted because of the TRIPS Agreement, is that any inventive step entitles the person for a patent.

Therefore, isolating certain colloids in an Ayurvedic plant or known medicine could be taken to be an inventive step. To obviate this situation, I would suggest that our hon. Minister will agree to the insertion of these two words 'derived from'. I do not think that this will create difficulties with our TRIPS Agreement or international obligation. This could be done very easily, if the hon. Minister agrees to that.

Now, the second point about which we have to be very much worried is the old Act, which was passed during the time of Shrimati Indira Gandhi. It made an exception in the case of medicines or those products which are required for health care. They had reduced the term of patent to which it is applicable -- seven years in case of medicines; and from the date of application, there is more time, that is about 12 years. But in the present legislation, which is before our Parliament, this term has been extended to 20 years, if it is necessary, according to the TRIPS Agreement. This is a very outrageous provision. In my view, it is exploitative; and it is entirely due to the pressures of the international pharmaceutical industry that instead of seven years, the term has been extended to twenty years in respect of all medicines. If at all we have to care a little for TRIPS Agreement, we could retain this 20-year period, but make an exception in case of medicines. A word could be inserted or an amendment could be made that ordinarily the life of a patent will be 20 years, but in case of medicines, it will be seven years, eight years or ten years. I hope, the hon. Minister can accommodate this point also so that we can really protect ourselves.

Now, the third point on which there was a lot of discussion was regarding licensing right or compulsory licence. This tries to cover the difficulty arising out of extending the term to 20 years. If the current life of a patent is for 20 years, even then, if we have the provision of compulsory licence, it will meet the situation. The provision of licensing right has been taken out. I have been pleading in the Joint Parliamentary Committee that we need not take it out. In countries like UK and France, if they find it compliant with the TRIPS Agreement, then there is no reason why we can also not devise a section about licensing right, just like the United Kingdom and France, where the licensing right is given to the Controller or the Government under special circumstances. This present legislation has brought out this provision of compulsory licence in clause 84 (1). It says:

> "At any time after the expiration of three years from the date of the sealing of a patent, any person interested may make an application to the Controller for grants of compulsory licence on patent on any of the following grounds, namely:--
>
> a. that the reasonable requirements of the public with respect to the patented invention have not been satisfied, or
> b. that the patented invention is not available to the public at a reasonably affordable price."

Now, this provision was made after discussions at great length. But in certain circumstances, certain medicines which may not be available to the general public at affordable price, and if somebody has to wait for three years, then thousands of people can die before they get the medicines.

Sir, now the provisions of clause 92 says that compulsory licensing would be given in case of national emergency or at times of stress and in case of non-commerical use. What is meant by non-commercial use is that medicines that are distributed by the Government regardless of commercial use but are not sold in the market. Life saving drugs at affordable prices are necessary for the ordinary people. If we want to take advantage of the provisions of clause 84 in the Bill and if we want to give real benefits to the common people, then the provisions, as contained, in clause 92 would have to be amended accordingly for making available the non-commercial use of medicines at affordable prices. The provisions, as contained, in clause 84 is that patented inventions are not available to the public at affordable prices. Either there would have to be an amendment of clause 92 or there would have to be an amendment of clause 84 where the period of three years could be struck down and the provisions of this clause made applicable immediately.

Sir, these were the three concerns that were agitating our minds for the last few years. I must say that Shri Maran has been very co-operative and has tried to accommodate our viewpoints. We support it and we hope that he would continue to put up a strong fight in the international arena for guarding our national interests, specially in the sphere of public health. I also hope that if he voluntarily agrees to accept my amendments, as suggested, then our concerns about public health would be fully met.

Sir, I hope by the year 2005 when we would, perhaps, be compelled to adopt a law for product patenting -- our present law is only for process patenting and not for product patenting. We would, by the year 2005, have had the General Elections and a new Government would be in place and as product patenting would be detrimental to our interests, the Government that would be then there in power would be strong enough to defy the international diktat on product patenting and would see to it that process patenting regime would continue even after the year 2005. We would only hope and pray for it.

DR. NITISH SENGUPTA (CONTAI): Mr. Chairman, Sir, thank you very much for giving me this opportunity though I do not know how long you would expect me to speak.

Sir, I rise to support this Bill. I would start by giving compliments to the hon. Minister who has been very receptive and has shown a rare open mind during these two to three tortuous years of negotiation. I have noticed that even when this Bill was being considered by a Joint Committee, the hon. Minister showed openness and agreed to a lot of changes in a number of cases in response to the legitimate demands made and the same was the case when the Rajya Sabha discussed this Bill.

Sir, I am happy that most of my colleagues here, irrespective of Parties, by and large have supported this Bill. There are, of course, cases like my distinguished friend Dr. Raghuvans Prasad Singh who, I think, symbolises all the traditional prejudices and fears about this Act that have been felt from the time the WTO and TRIMS were being discussed at various Government levels. Many people discussed it without even understanding it. I remember in an inter-Ministerial meeting where I happened to be present, those were in the closing years of my service in the Government, one distinguished representative of a distinguished Ministry simply said that he supported TRIMS because he felt that we all should be trim. That was the kind of ignorance.

Mr. Chairman, Sir, I must say that this is a sophisticated law in a very sophisticated area. The Government of the late Indira Gandhi in the 1970 had abolished patent monopolies for food and drug products. In a way, this was a salutary move as history subsequently has shown that for years we could have good drugs available for the common people at rates they could afford and had a very efficient public health system.

Green Revolution had partly started before that. This was the period after which the Green Revolution had its full effect. In 1994, India signed the TRIPS Agreement and, under pressure from the WTO and powerful multinational corporations and agreed to re-grant food and drug product patents subject to certain safeguards through compulsory licensing. This was a retrograde development as shown by the fact that many drugs disappeared, many drugs became costlier, and the nation had to pay a very heavy price thereafter.

16.41 hrs (Dr. Raghuvansh Prasad Singh in the Chair)

Now the WTO has come. It is an inevitable and an unstoppable process. If you have to live in the modern world, you have to accept the WTO dispensation. It also brings in certain advantages. I have seen in the newspapers that Indian mango is flooding the United Kingdom today. Without WTO dispensation that would not have been possible. On the other hand, Indian *Basmati* was being exported to, let us say, a country like Bangladesh. Today I notice that even China is exporting *Basmati* to Bangladesh. In fact China is flooding Bangladesh market with Chinese *Basmati* at prices much cheaper than the Indian price. Why has it happened? It is because we give price protection to our

farmers. China never had to do it. Our labour is very demanding - my trade union friends must answer to it -and the cost goes on increasing. China has no labour law. China does not have any of these restrictions. They can go on just whipping their labour, and get them to produce things at prices which are ludicrously low in the context of the price prevalent in many other parts of the world. But that is also inevitable. When the WTO came ...(*Interruptions*)

On the other hand, under pressure from the WTO, sometimes we go out of our way to help the WTO dispensation. Here I take the expression used by my friend Shri Rupchand Pal. When we are called upon to bend, we seem to be crawling. During the period from 1997 to 1999, the then Finance Ministers some how or other reduced the duties much ahead of the WTO schedule, and sometimes much lower than what the WTO had prescribed. Today's demand recession is very much a result of that. Indian industry is not able to produce goods and services at the price at which the Chinese industry is doing. In a second invasion across the Himalayas Chinese are simply flooding our markets with all varieties of consumer goods. There, of course, WTO regime has to be blamed.

More than that I should say the Finance Ministers of those years went ahead of the WTO schedule and went much below what WTO schedule prescribed in the matter of rates of duties which were made applicable. As a result of that, in quite a lot of areas, especially in the consumer goods sector, Indian goods have been practically priced out by the Chinese. Our industry is facing an unprecedented recession. I am sorry to say that the Government has so far not really sat up and tried to control this great danger which is facing our industry today, this danger of demand recession.

I must appreciate Shri Maran's statement in the last phrases of his statement where he said, "Let us take India forward even while letting the world know that Indian democracy correctly honours its international commitment." I would like to add to it, "and also that India is concerned with her national interest and national obligation." Some such thing should be put in there because national interest cannot be ignored in any circumstances.

Seattle was a disaster in a way. However, I am happy that the Indian delegation, under the leadership of Shri Maran, had followed a valiant rearguard action at Doha to undo the damage caused at Seattle. Doha was a great event. I am sure that following all the agreements that have come up afterwards, it took into account India's legitimate interest.

The flexibility and rights now available need to be properly built and modified in the Indian Patents Law in order to give them the statutory effect.

Sir, I have got a few suggestions. One is about the Patents (Second Amendment) Bill as earlier modified by the Joint Committee. It is our duty to draw attention to the fact that the sentiments which were expressed in Doha and later in our Parliament by the hon. Minister of Commerce and Industry have not been fully incorporated in the Bill. In several respects, they need to be done.

Some of the important aspects about the Patents (Second Amendment) Bill are as follows. (a)Inadequate powers of the Government to safeguard the public health or interest *vis-à-vis* monopoly rights proposed to be given to patent-holders; (b) lack of foolproof definition of a 'patentable invention' so that unscrupulous claimants should not be able to extend the patent monopoly beyond 20 years.

Then, you have to define the concept of parallel imports in such a way that it protects the legitimate public interest whenever it arises.

Lastly, they should propose re-introduction of Product Patents in January, 2005.

Well, I am happy that Shri Maran did give an assurance that there would be another Amendment Bill around 2005, when the Product Patents would be introduced.

This can be corrected at this stage by moving appropriate amendments in the Patents Bill.

Then, I come to sub-para 5 of Section 5(c) which says:

> "The claim or claims of a complete specification shall relate to a single invention, or to a group of inventions linked so as to form a single inventive concept, shall be clear and succinct and shall be fairly based on the matter disclosed in the specification. "

Similarly, Section 11A of Clause 9 says:

> "Applications for patents shall not be open to the public for period of eighteen months from the date of filing or date of priority, whichever is earlier. "

Sir, I do not really understand what is the particular significance of 18 months? Why should it not be 25 months or

less than 18 months? I think, 18 months is a very unreasonable time.

Sir, now, I would quote a few lines from the French Patent Law which reads:

> "Where the interests of pubic health demand, patents granted for medicines or for process for obtaining medicines may be subject to *ex officio* licences in the event of such medicines made available to the public in insufficient quantity or quality or at abnormally high prices, by order of the Minister responsible for industrial property."

I think, we should have some such provisions so as to strengthen the concept of public interest.

Lastly, Mr. Chairman, Sir I come to the Product Patents. The Doha Declaration says that the least developed countries are granted for pharmaceutical products, an additional transitional time which apply to Sections 5 and 7 or part-II of the Product Patent.

Since 70 per cent of India's one billion population is below poverty line and since the *per capita* income is still much below the US standard of 100 dollars, I think, it will be better if a further extension of additional 10 years be granted to India. India should ask for these 10 years extension because it will help us.

All that say is that globalisation is inevitable and we must accept it. But then, the point is that we must take very cautious steps so that we do not find ourselves tripped in that process. I think, some time is needed. So, India should ask for these 10 years. Ultimately, we must deal with the prejudices which are there about product.

Dr. Raghuvansh Prasad Singh, when was in the *Vipaksh* and not *Nishpaksh*, mentioned about the fears of a lot of indigenous products now being patented abroad. Why can we not patent them ourselves? In fact, one message that should go loud and clear on the Patents Bill is that we should encourage our people to take patents on quite a lot of indigenous products so that when the world competition comes, we do not find tripped and we can stand on our ground.

With these words, I strongly support this Bill.

SHRI SURESH KURUP (KOTTAYAM): This amendment Bill to the Patents Act of 1970 is brought about after so many months of discussions.

The Joint Parliamentary Committee has taken into consideration various aspects of the problem and has given a detailed report.

Patent, as everybody knows, is an exclusive right granted to manufacture the invented article for a limited period. It is a means to ensure material reward for the inventor for the intellectual efforts and returns on investment made by him.

The Patents Act 1970 stipulates the term of patent-grant in India for 14 years. As per the TRIPS Agreement, the period should be raised to 20 years. One of the main features of this Bill is that this clause regarding 14 years is going to be raised to 20 years. As has already been pointed out by many Members who spoke earlier, this in fact is quite strange because in a fast changing world of newer technological innovations, a product or process inevitably becomes obsolete and irrelevant much before 20 years. So, this period of 14 years should be brought down. But it raised the period to 20 years. Hence, ultimately, the stranglehold of multinational companies over our country is going to be perpetuated through this Act.

I agree that the hon. Minister had taken a firm position in the Doha Conference and could get some alterations in favour of the under-developed and the developing economies. But the fact is that the overall thrust of WTO and TRIPS Agreement is in favour of the rich nations and the multinational companies. Only the Doha Declaration could bring about some cosmetic changes.

It will be in the interest of the developing nations to ensure better transparency with regard to the interpretations of the terms and conditions in Article 31 of the TRIPS Agreement. I, therefore, suggest that 'the reasonable period' in the relevant Section after which the proposed user can approach the Controller for compulsory license should be specifically spelt out.

One of the important aspects of the 1970 Patents Act is that India can now reasonably be proud of a strong

pharmaceutical industry and comparatively cheap medicines. But when this amendment Bill becomes a Law, ample protection will be given to the patent-holder and the common people will be at the mercy of the patent-holder, that is, the multinationals. In fact, it blocks the access of ordinary people to medicines and life-saving vital drugs. The prices of many IPR protected products are jacked up exorbitantly many times above the cost of production because the Corporation owning a patent can prevent competition. The most obvious example is pharmaceutical drugs and the world very well knows how the multinationals are playing with the life of the people with medicines for life saving drugs, especially AIDS.

Though TRIPS Agreement allows the use of compulsory licensing provision to suspend the Patent right in case of a national emergency and allow the production or the import of the product, when South Africa introduced such a legislation in the case of AIDS drugs, 30 multinational companies sued that country.

Almost all the provisions in the TRIPS Agreement protect the multinationals and help them fleece the poor people of the world. I would like to know what provision this Bill has, to control multinationals when they increase the price of life-saving medicines. It is only through a compulsory licensing system, the interests of the general public in the developing countries can be protected. The worldwide debate in the recent past has been concentrated on exploring ways to ensure common man's access to medicines through a compulsory licensing system.

New drugs that would be covered by long period of patent protection will be scarcely available. The case of existent drugs, which might be produced by innovative processes, will have the same problem. The multinationals can hike the prices sky-high. To overcome this problem compulsory licensing system will have to be suitably evolved. The TRIPS Agreement allows a foreign patent holder to import the patented product to a country that grants the patent right. They need not produce it locally. This will definitely create problems for a vast country like India and for us production has to be made through domestic enterprises. Only domestic production can ensure availability of medicines to the public.

The opportunities available in Paris Convention and TRIPS Agreement should be fully utilised to grant compulsory license. When there is insufficient availability of the patent product, compulsory license could be invoked. When monopolistic prices are charged by the patent holder, compulsory license could be invoked. These aspects should be taken into consideration while amending Section 84. Doha Declaration provides freedom to determine the grounds upon which compulsory license could be granted. Keeping in view the Doha Declaration, Sections 86. 87 and 88 of the Patent Act should be retained. The original Sections 86, 87 and 88 of the 1970 Act should be retained.

Sir, as we go through all the criticism that had already been voiced against this Bill, one could understand that the main concern is the availability of drugs and prices. I would have supported this Bill if this provides sufficient safeguards to ensure the availability of life-saving drugs for prices within the reaches of the common man. Doha Declaration gives sufficient space for such a measure even within the parameters of WTO. But this Bill fails to utilise even this aspect.

Only a Government that has got sufficient political will can do that. This Government, that boast of Pokhran fails to stand up before the multinationals. When it comes to the question of life-saving drugs, the examples before the developing countries are not of India but that of Brazil and South Africa. Our Government has never dared nor will ever dare to put up a fight against multinationals regarding life-saving drugs for the common people. The people expect at least the vigour with which the Government protect a person like Shri Narendra Modi be shown for making available the life-saving drugs to the common man. I wish the Government shifts its priorities from the vigour they show to fight the minorities to fight the multinationals.

The last point that I would like to make is, this Bill has not taken into consideration the general situation all over the world after Seattle. Seattle has shown that the people in the developed countries are coming out against the WTO and TRIPS. Why they chose Doha for the conference? It is because they wanted the docile people, a docile country where there would not be any protest. So, our Government should understand that the unity among the developing countries is coming forth. India should lead that unity. But, unfortunately India is not there to lead this unity which is emerging among the developing countries after Seattle and which was evident in Doha. With these words, I conclude.

श्री प्रियरंजन दासमुंशी (रायगंज) : सभापति महोदय, मेरा एक विनम्र निवेदन है। आज जम्मू में जो घटना घटी, उसमें आतंकवादियों के हमले से सिविलियन फैमिलिज के परिवार मौत के शिकार हुए। हमें टेलीविजन द्वारा इसकी जानकारी मिली है। मेरी दरख्वास्त है कि आज आधे घंटे की चर्चा है और होम मिनिस्टर का यहां इंटरवैंशन है। इसलिए सदन उठने से पहले होम मिनिस्टर तैयारी के साथ सदन में आए और सूचित करें कि यह घटना कैसे हुई? इस पर आज ही बयान होना चाहिए। यदि इस बारे में आपकी तरफ से आदेश हो जाएगा तो हम संतुट होकर बयान सुनने का इंतजार करेंगे।

SHRI SUDIP BANDYOPADHYAY (CALCUTTA NORTH WEST): This is a very serious matter. The House should be kept informed....(*Interruptions*)

श्री प्रियरंजन दासमुंशी (रायगंज) : आज आधे घंटे की चर्चा है और होम मिनिस्टर यहां आएंगे लेकिन वह तैयारी के साथ आएं ताकि इस बारे में बयान दे सकें।

17.00 hrs.

ऐसा कोई उत्तर सरकार की तरफ से आना चाहिये क्योंकि यहां दो-दो मंत्री बैठे हुये हैं।

सभापति महोदय : यह सवाल पहले उठा था। संभव है कि स्टेट होम मिनिस्टर या होम मिनिस्टपर आ जायें।

श्री प्रियरंजन दासमुंशी : सभापति जी, सरकार सदन को सूचित करे।

THE MINISTER OF ENVIRONMENT AND FORESTS (SHRI T.R. BAALU): Sir, in the morning also, many hon. Members have raised this issue and the Minister of State for Home Affairs has already taken note of it. I think, by this time, he would have informed the senior Minister. So, at any point of time, he may come...(*Interruptions*)

SHRI E. AHAMED (MANJERI): Sir, it is really shameful for the Government to leave the Members of Parliament to know everything from the Press. We are entitled to know the facts. He should convey it to his senior colleague.

SHRI PRIYA RANJAN DASMUNSI : Sir, he can convey to Shri Advani and he can make a statement before the rising of the House. हाउस उठने से पहले सदन को सूचित किया जाये और बयान दिया जाये ताकि जब हम डिबेट में हिस्सा लेंगे तो हमें संतोा होगा।

पेट्रोलियम और प्राकृतिक गैस मंत्रालय में राज्य मंत्री तथा संसदीय कार्य मंत्रालय में राज्य मंत्री (श्री संतोा कुमार गंगवार) : सभापति महोदय, इस दुखद दुर्घटना की जानकारी सभी को हो गई है। सरकार पूरी तरह से सक्रिय है। मैं पूरी स्थिति की जानकारी लेकर कोशिश करूंगा कि सदन उठने से पहले आप सब को सूचना मिल सके।

SHRI M.V.V.S. MURTHI (VISAKHAPATNAM): Mr. Chairman, Sir, the Patents (Second Amendment) Bill 2002 can partially redress the difficulties faced by a country like ours but it cannot redress them fully. In the words of the hon. Minister himself, we have some international obligations and we have to fulfil them. The Indian democracy correctly understands its obligations. But the Act itself has a lot of complexities. Ordinarily, it is like Intellectual Property Rights Act which is also difficult to understand. It is a sophisticated way of dealing with things.

I do appreciate that at Doha, India was able to gain certain ground and was also able to significantly put forth its point of view as well as that of the other developing countries. It is very difficult to go with the TRIPS but however, beggars cannot be choosers. We have a very limited area because public health is a very vital and important thing in a developing country. The medicines that we use are generic medicines and are of absolute necessity. But if these medicines and drugs are to be supplied to the poorer countries, the developed countries should adopt a soft way of dealing with things because they are the countries where issues relating to intellectual property rights arise. The poorer countries cannot put forth their money for inventions. Even if we invent some of these medicines, they are always challenged in the USA. Recently, some of our drug manufacturers from Hyderabad had to face a lot of problems while marketing their drugs in the USA. There is no *quid pro quo*. There is no reciprocal arrangement in these things.

They always feel that intellectual property is their own right. I did not mention the name; but it is from Dr. Reddy's laboratory. They have faced a lot of problems. But he was able to ultimately manage it with great difficulty. This is not a single or isolated incident. There are many such intellectual property rights incidents in a country like ours. The situation has to be dealt with in a different manner, but there are certain protections under clauses 84, 85 and 86 that on expiry of the three years of ceiling of a patent, any interested person may make an application to the Controller for grant of compulsory licence. This compulsory licensing is not in itself an instrument to be used. It is only the ultimate resort. Otherwise we will be failing in our obligations. If we use it in the beginning itself or every three years, who will trust our country? Nobody will trust our country. We have raised it to 20 years − the patent rights to be used for intellectual property. It has to be honoured in normal conditions. We cannot take the pretext under clauses 84, 85 and 86. Our country can always give compulsory licensing to manufacture these drugs and make them available to the general public. You could do it once in a while. But you cannot do it for all things. If that is the case, how are we going to tackle the situation? This is to be explained. This is one of the situations I can foresee. This has to be done without fear or favour or even modesty. We should go in as many times as needed for the amendment of this Act.

It is also necessary that we have to review the Intellectual Property Rights at regular intervals. We should also be alert about what is happening in the field of medicines. How we are going to tackle this has to be looked into. Unless this is done we will be facing a lot of difficulties in the tenure of patenting.

The other thing is, under the pretext of compulsory licensing any country without much obligation to the democratic values can always say compulsorily we will manufacture these for exports. They can manufacture them. They can relax that rule. If they go on exporting it to other countries, the patentee will lose all his merit and he will be at a disadvantage. How this will be linked with the exports also will have to be looked into. Many countries can flood into

India and spoil all our patents and likewise we can also do it in other countries. This compulsory licensing is an instrument which should be used very rarely. But in the common parlance under the normal circumstances we should honour our commitments. This is one area where the hon. Minister has to be very careful.

There is also the product patent protection which has to come necessarily in 2005. Before that, in a country like India it is much easier for unscrupulous fellows to copy the process. That is why product patenting is also necessary. It is a necessary evil which has to come to a country like ours. We have to look forward to it. We should not look at it that product patenting is going to harm the country. It is going to protect the country's interest. It has to come in 2005 and I am sure that our hon. Minister will take necessary protections in all these things.

By and large, I would like to say that we should be alert if public health is affected due to the high cost of medicines. Today, some medicines are available at exorbitant price. Unless it is reimbursed either by Parliament or the companies where they are working, it is very difficult to get such medicines today. The cost of medicines in the cases of hepatitis and viral fever is very high. These are the prices at which medicines are available. Keeping this in mind, how will you make medicines available to the common man? How are you going to protect the health of the common man? The poor people of this country should not feel that medicines are available only to the rich people. Every life is precious. Even the life of the poor has to be protected. So, how are you going to make these costly medicines available to the common people of this country? This point has to be explained by the hon. Ministerâ€¦...(*Interruptions*)

SHRI MANI SHANKAR AIYAR (MAYILADUTURAI): It is with your supportâ€¦...(*Interruptions*)

SHRI M.V.V.S. MURTHI : If that is going to solve the problem, we will do that. But it is not going to solve the problem. The problem has to be looked at from a different arena and has to be tackled in a different manner. I am sure that a seasoned Minister like Shri Maran will look into the availability of all the latest patented medicines to the common man of the country to safeguard his health. This is vital. Kindly look into this aspect. Sir, I support this Bill.

SHRI AJOY CHAKRABORTY (BASIRHAT): At the very outset, our hon. Minister reminded us our obligation to TRIPS Agreement and other international commitments. It also shows us the element of helplessness. He pleaded helplessness that we cannot do anything as we are member of the WTO. Wherever we enact such a law, priority should be given to the interest of the nation and the common people of this country.

In 1970, the first Patent Bill was introduced and it was the model law under which our pharmaceutical industry grew up and the prices of drugs were the cheapest in our country compared to other countries of the world. When the first amendment came in 1999, eminent personalities of country, economists and scientists warned of adverse effect of the amendment. It is not only that. The Law Commission also warned the Government and asked whether it was necessary or not. What happened after that? In the name of Intellectual Property Act, our MNCs have enhanced the prices of life-saving drugs. It is beyond the reach of the common people of the country.

I urge the Minister to make a survey throughout the country so that he would appreciate the present position, the position before 1999 and after 1999.

I have gone through the Report of the Joint Parliamentary Committee very carefully. And I am very much disappointed to read it. It says "affordable and reasonable prices". What is an affordable price? The price at which the poor man can buy it is an affordable price. But what is the position now?

Sir, in our country, Members of Parliament, Members of Legislative Assemblies, the people who are working in the organised sector, and those who are in high positions get medical facilities. They have the reimbursement facilities also. But what about the common people? What about the masses, the agriculture workers, the workers in the unorganised sector, and the poor people of the urban and rural areas who form eighty per cent of the population of our country? What facilities are they getting? May I ask the hon. Minister as to what safeguard have you provided in this Amendment to control the prices of life-saving drugs? I want to ask the hon. Minister that. Rich people can afford the high prices of drugs. But what about the common people, poorer people and masses of this country? How can they afford the prices which is rising sky high? So, my submission is that in the name of Intellectual Property Rights, MNCs are looting. They are looting the people of our country.

The Minister reminded us about our obligation to the international community. May I ask the hon. Minister as to what happened in United States of U.S.? They have enacted a law according to which if U.S. enters into any international agreement or pact, if it is detrimental to the interest of people of U.S. and if there is any conflict between the U.S. law and international law, then U.S. law will prevail which will be in the interest of the people of U.S.. They have enacted a law like this. Shri Suresh Kurup has already told this. The Conference did not take place in any U.S. country, or European country or in any Latin American country. They have shifted the venue to Doha to avoid the demonstration of the common people. At first you fought in Doha. But ultimately you succumbed to the pressure. But U.S. has enacted a law saying that their law will prevail if there is any conflict between their law

and the international law. We should also keep the interest of the country, interest of the masses, and the interest of the common and poor people in our mind. There should be a stringent provision to control the price hike of medicines which is consumed by the common people of our country.

Sir, this morning we received this Bill in an envelope. I have submitted some amendments. But those amendments have not been circulated. I urge the hon. Minister to accept our amendments. Otherwise, we cannot oblige the hon. Minister because it is a life and death question of the people belonging to poorer sections of our country. So, I oppose the Bill.

SHRI MURASOLI MARAN: Mr. Chairman, Sir, I have to congratulate all the hon. Members who generally offered constructive cooperation to this Bill. The Deputy Leader of Congress is present here. I have to thank the Congress Party because but for their willing cooperation, this Bill would never be passed.

I should give my thanks and wholehearted support to the JPC. They actually re-drafted Chapter XVI. They re-worked all the provisions. Today is a good day for me in the sense that my brother Mr. Mani Shankar Aiyar was paying left-handed compliments. Probably, the reason is that he was one of the members of JPC and therefore, he is one of the authors of this reworked Bill. Even day before yesterday, when we met, he contributed an important amendment. Therefore, I have to thank him. It augurs well.

First of all, I would say that this Bill stands on the following pillars: public interest, public health and nutrition, national interest, national security, protection of traditional knowledge and environment. Section 3 says what are not inventions. So, in the original Act, there were Sections 3 (a) to 3 (i) − only a testing process was there. Now it has become complicated. The JPC has removed it. The JPC had added seven more things. One is to take care of public morality which causes serious prejudices to human, animal or plant life or health or to the environment. This is a new addition created by the JPC.

Then, the next important thing is the discovery of any living thing or non-living thing. They will not be patented. Additionally, plants and animals in the world or any part thereof, other than the micro-organisms can not be patented because you cannot create a Harvard Mouse or something like that. So, we have prevented it.

Then, an invention which is a traditional knowledge or which is an aggregation or duplication of known properties or traditionally known component or components are also banned. They cannot be patented. These are very safe provisions.

Let me start with traditional knowledge. According to Section 3, it is not at all patentable. Then, section 64 is there. If it misses our attention and if it is patented, we can revoke it. Then Sections 25 (1) (a) to (k) is there. Here is a clear ground. Any public can take opposition and challenge the thing before the Controller. These are the special safeguards for our traditional knowledge. Here, I have to tell you how *neem* was protected. *Neem* is a famous thing which comes from generation to generation. It is known for its many properties, one of them being wound healing properties. It was challenged. It was made a patent in Europe by the giant *W.R. Grace* at that time. This is a very important information. A manufacturer from Delhi by name Mr. Abhay Phadke, who has worked in the *neem* tree business for 25 years, was one of the witnesses called by the Plaintiffs in the court room. Mr. Phadke told the court of law that he developed the process to manufacture *neem* oil as a pesticide as far back as 1985. The process carried out by Mr. Phadke with the naked eye on his own hand had astonishing similarities to that patented by Mr. W.*R. Grace* as his intellectual property. So, it was removed. The patent was denied. It was taken out. We are not patenting micro-organisms. Micro-organisms are not being made patentable in the Bill. Likewise, the discovery of any living or non-living thing being are specifically excluded because naturally-occurring micro-organisms are nowhere patentable. But since product patents are not being introduced, we may have to introduce it before 1.1.2005. Artificially developed micro-organisms will also not be patentable. Here, I want to quote an example. Our house-wives all over India make curd out of milk by a process.

The micro-organism is responsible for it. It takes about 8 to 10 hours. Suppose somebody discovers another micro-organism by which curd can be prepared within 2 hours, the product cannot be patented. Therefore, the micro-organism will not be patented. That provision is there. However, the process by which the micro-organism has been developed can be patented if it meets the criteria for invention. This is a good example.

Sir, a question was raised by many of my colleagues, especially by Mr. Shyma Charan Shukla and Mr. Mani Shankar Aiyar, about licence of right. I would like to inform them that this Bill was before the JPC for almost two years. They had gone through every word of it. They thought that it was not necessary. At the cost of repetition, I would like to say what is licence of right. This is an ordinary commercial licence. So, the endorsement, if it is allowed, is indicative of the willingness of the person to give licences. But why was it removed and why did we not resort to it? It is because we have got a very powerful provision under Section 92 of the Act. In the United Kingdom, there are two kinds of licence of right. One is for WTO countries and another is for non-WTO countries, but they have also amended their law in 1999.

So, Section 92 of our law is very powerful. It takes away all the so-called licence of rights. Regarding licence of right, I would like to quote the famous author David Bainbridge. In his book "Intellectual Property"; published by Financial Times, This is what he said:

> "This provision might be used by a proprietor who has been unable to exploit his patent to good effect."

He says that only those people who cannot exploit their patent will use this provision. So, it is doubtful as to whether making an entry in the register to the effect that licences are available as a right makes any difference because if the invention is commercially attractive in the first place, the proprietor should have no difficulty in finding an organisation or a company willing to exploit it under an assignment or exclusive licence. If there was a demand, he would have sold it. So, only when there is no commercial demand, he resorts to this kind of a licence. However, apart from this form of free advertisement, − he says that licence of right is a free advertisement − he gets one benefit. There is an added bonus for the proprietor because the subsequent renewal fee is reduced. So, this is the difference. We have done away with it now. Instead, we have used the most powerful Chapter, that is, Chapter XVI.

Sir, many hon. Members have raised a question as to why we should give three years. I agree that a period of three years is not at all necessary. As per Section 100 of the original Act, the Government can use it any time and there is no time limit. We have to just notify and use it. Then, Section 47 says that grant of patents is subject to certain conditions. Section 102 deals with acquisition of inventions and patents by the Central Government. Why should the Central Government acquire a patent and acquire a medicine? They can do it only in the interest of public health system. They can procure it and sell it to hospitals or they can give it to third parties. So, all these provisions are there.

I would like to inform Mr. Suresh Kurup that it is not necessary that we should wait for three years. If the Government wants, they can invoke all these provisions under Sections 47, 100 and 102 whenever they want. These provisions can be invoked any time and they can take away the right of the patent holder. Now, what is important is Chapter XVI, which speaks about compulsory licence.

सभापति महोदय : साढ़े पांच बजे हैं और इस समय "आधे घन्टे की चर्चा" पर विचार होना है। सभा की सहमति हो, तो इस विधेयक के निपादन के बाद माननीय गृह मंत्री जी का जम्मू-व-कश्मीर में हुई घटना के बारे में वक्तव्य होगा और उसके बाद आधे घन्टे की चर्चा ली जाएगी।

SHRI MURASOLI MARAN: There is the usual procedure. We have to notify the Government. We have to call for the Opposition. We have to give a hearing. All those things are there. Day before yesterday, when we met, we made it very strong in the sense that in circumstances of national emergency or circumstances of extreme urgency or in case of a public non-commercial use, the usual procedure will not apply. The Government can straightaway, by a Notification, procure it from the patent holder or from the company and distribute it. This is a very important thing.

Who will decide that there is a national emergency? Who will decide that there is an extreme urgency? Who will decide that it is required by public for a non-commercial use? It is the Government alone. That is the flexibility available in the Doha Declaration. So, the first sentence in Section 92 is:

> "If the Central Government is satisfiedâ€¦it may make a declaration."

If they make a declaration, that is all. What are we dispensing with? We are dispensing with the usual procedure and the provisions of Sections 83, 87, 88, 89 and 90 shall apply.

Let us see what they are. Here is a list. Section 83 gives a list of general principles. What are the general principles? This invention should be worked in India on a commercial scale. They cannot work it somewhere. It should be worked here. That means, it should be imported or it should be produced here. Section 83 says:

> "(c) that the protection and enforcement of patent rights contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge.."

So, it should help our technology transfer.

Then, it says:

> "(d) that patents granted do not impede protection of public health and nutrition and should act as instrument to promote public interest specially in sectors of vital importance for socio-economic and technological development of India;"
>
> This is much more important.
>
> Finally, part (e) says:

"that patents granted do not in any way prohibit Central Government in taking measures to protect public health;'

So, the Central Government has been given wide range of powers.

Then, most importantly, the patents are granted to make the benefit of the patented invention available at reasonably affordable prices to the public.

So, Mr. Aiyar asked a question: "Who will decide the reasonably affordable prices?" We have to decide it. The Government has to decide it. The Controller has to decide it. Mr. Aiyar clearly stated that all these things will not first go to the WTO. First, it should come to the Supreme Court.

SHRI SHYAMACHARAN SHUKLA (MAHASAMUND): After three years?

SHRI MURASOLI MARAN: No; immediately. So, please ask Mr. Aiyar. He is the author of that amendment. It would be immediately by a Notification. That is all. It is not that you have to inform him. It could be without informing him. That is why we have dispensed with this article.

Then, there are general purposes for grant of compulsory licensing. What are the purposes? The patents of inventions are worked on a commercial scale in the territory of India without undue delay. They should not get a patent and sleep over it or create an artificial demand or create a monopoly. To the fullest extent, that is reasonably practicable. What is the reasonableness? It will be decided by the Government. It will be decided by the Controller. Then, in the interest of any person, for the time being, making or developing an invention in the territory of India under the protection of a patent is not unfairly treated. For example, Dr. Reddy's Lab produces something. You should not come here to do mischief to do harm to Dr. Reddy's research work. So, that provision is there that the patent articles are made available to the public again at reasonable prices.

Then, the licence is granted with a predominant purpose of supplying it to the Indian market. That means, after predominantly satisfying the requirements of a local market, we can export also. These are the provisions. These provisions over-ride. Before this provision, what is the licence or right? Nothing. That is why the JPC in its wisdom have removed it. Therefore, there is no requirement for a licence of right.

I think that this kind of power can exist only in an authoritarian system. It all depends upon the facts and circumstances of the case. Let us wait and let us see how the legal jurisprudence traverses in the Supreme Court.

These are provisions. Time is short. I can only say that everybody was telling about the 1970 Act. Mr. Aiyar also referred to it, when he was sitting in the Gallery when Mr. Dinesh Singh was the Minister. But I will still further go back. It was the vision of Pandit Nehru. He created Justice Rajgopalan Ayyangar Committee. The Committee suggested that let us allocate something for process patenting for developing our economy. It is a great achievement. With a foresight, with a vision, the Ayyangar Committee had recommended -- I see a comment: "The Patent Act of 1970 was not an accidental piece of legislation, but a deliberate assertion of the national system." So, we have asserted it. What is the result? That Policy instrument was suitable for that era and now we have to prepare ourselves for the new era.

Today we see that we generate medicine. India is number one in the world. In IT and software in the knowledge-based industry, we are going up and up. Therefore, if you want, I can give you a list. As of now, our industries are discovering new molecules.

Even today, I have seen an article that for cancer, Dr. Reddy"s have discovered a new molecule. What a day? They are co-marketing it, co-developing it with other multinationals. Here is a turning point. So, this is the time, let us move over from reverse engineering mode to the R&D mode. I think, this Bill will pave way for it.

Once again, I thank all the hon. Members.

SHRI MANI SHANKAR AIYAR (MAYILADUTURAI): The hon. Minister should say that he is going to bring Patents Third (Amendment) Bill.

SHRI MURASOLI MARAN: He is a learned man. He was from the IFS. It has to come, whoever is there.

SHRI MANI SHANKAR AIYAR : The hon. Minister should just say that.

SHRI MURASOLI MARAN: It is not necessary. It will come, it has to come before 1.1.2005. If it is delayed, again somebody will go to the WTO.

SHRI SHYAMACHARAN SHUKLA : The hon. Minister should not sum up by saying reverse engineering. This is just finding a new path as going to the top of the Everest, you go *via* South Pole or North and you face China. Our engineers and scientists are finding new ways to discover medicines. It is not reverse engineering.

SHRI MURASOLI MARAN: I am saying we have got innovative methods. So, instead of saying reverse engineering, he should have said copying methods. I will say new innovative methods. They are experts. They have a lot of space. About 90 per cent of the WHO drugs are generic medicines.

Mr. Aiyar wanted to know whether there will be room or not. There will be a lot of room. Ninety per cent space is available for those things because usually, as you know, to develop a new medicine it requires about five hundred

million dollars. Three out of ten recover the R&D cost. Out of 100, ten per cent come to the trial stage. So, there will be always room for innovative or reverse engineering.

So, once again I thank all the hon. Members for their cooperation.

MR. CHAIRMAN : The question is:

> "That the Bill further to amend the Patents Act, 1970, as passed by Rajya Sabha, be taken into consideration."

The motion was adopted.

MR. CHAIRMAN: The House shall now take up clause by clause consideration of the Bill.

Clause 2 Substitution of certain words

"High Court" and "Court"

The question is:

"That clause 2 stand part of the Bill."

The motion was adopted.

Clause 2 was added to the Bill.

Clause 3 Amendment of section 2

MR. CHAIRMAN: Prof. Rupchand Pal - not present.

The question is:

"That clause 3 stand part of the Bill."

The motion was adopted.

Clause 3 was added to the Bill.

Clause 4 Amendment of section 3

SHRI AJOY CHAKRABORTY (BASIRHAT): I beg to move:

Page 2, *after* line 41, *insert*

(fa) in clause (I) for sub-clause (i) the following

sub-clauses shall be substituted namely:-

i. Pharmaceutical substances includes -- drug

Chemical entity, or medicinal drug or drug molecule

Or bulk drug involving inventive steps. (6)

MR. CHAIRMAN : Shri Rupchand Palâ€"Not present.

SHRI AJOY CHAKRABORTY (BASIRHAT): I am moving my amendment No.10.

I beg to move:

Page 3, lines 21 and 22,-

omit "other than micro-organisms but" (10)

MR. CHAIRMAN: Shri Rupchand Pal to move amendment No.11â€”Not present.

Shri Shyamacharan Shukla, are you moving your amendment No.43?

SHRI SHYAMACHARAN SHUKLA (MAHASAMUND): In view of the reply of the Minister, I am not moving my amendment.

MR. CHAIRMAN: I shall now put amendment Nos. 6 and 10 moved by Shri Ajoy Chakraborty to vote.

The amendments were put and negatived.

MR. CHAIRMAN: The question is:

"That clause 4 stand part of the Bill."

The motion was adopted.

Clause 4 was added to the Bill.

Clause 5 Amendment of Section 5

MR. CHAIRMAN: Shri Rupchand Pal − Not present.

SHRI AJOY CHAKRABORTY : I beg to move:

Page 3, for line 36 to 39,-

substitute "5. for section 5 of the principal Act the following shall be substituted, namely:-

'5. Patents shall be available for any inventions including pharmaceutical substances whether products or processes in all field of technology, provided that they are new, involve an inventive step and are capable of industrial application.

Explanation:- For the purposes of this section, the term 'inventive step' and 'capable of industrial application' may be deemed to be synonymous with the term 'non-obvious' and 'useful' respectively." (12)

MR. CHAIRMAN: I shall nowput amendment No.12 moved by Shri Ajoy Chakraborty to vote.

The amendment was put and negatived.

MR. CHAIRMAN: The question is:

"That clause 5 stand part of the Bill."

The motion was adopted.

Clause 5 was added to the Bill.

Clauses 6 and 7 were added to the Bill.

Clause 8 Amendment of section 10

MR. CHAIRMAN: Shri Rupchand Palâ€"Not present.

The question is:

"That clause 8 stand part of the Bill."

The motion was adopted.

Clause 8 was added to the Bill.

Clause 9 Amendment of chapter IV

MR. CHAIRMAN: Shri Rupchand Palâ€"Not present.

The question is:

"That clause 9 stand part of the Bill."

The motion was adopted.

Clause 9 was added to the Bill.

Clauses 10 to 20 were added to the Bill.

Clause 21 Insertion of new section 39

MR. CHAIRMAN: Shri Rupchand Palâ€"Not present.

The question is:

"That clause 21 stand part of the Bill."

The motion was adopted.

Clause 21 was added to the Bill.

Clauses 22 to 24 were added to the Bill.

Clause 25 Substitution of new section

For section 48

MR. CHAIRMAN: Shri Rupchand Pal to move the amendmentâ€”Not present.

The question is:

"That clause 25 stand part of the Bill."

The motion was adopted.

Clause 25 was added to the Bill.

Clause 26 was added to the Bill.

Clause 27 Subsitution of new chapter for chapter XVI

MR. CHAIRMAN: Shri Rupchand Pal-- Not present.

The question is:

"That clause 27 stand part of the Bill."

The motion was adopted.

Clause 27 was added to the Bill.

Clauses 28 to 38 were added to the Bill.

Clause 39 Substitution of new

chapter for chapter XVI

MR. CHAIRMAN : Amendment Nos. 27 to 29 − Shri Rupchand Pal. He is not present.

Shri Ajoy Chakraborty, are you moving amendment No.30?

SHRI AJOY CHAKRABORTY : Yes, I am moving the amendment.

I beg to move:

Page 12, line 35,-

for "directs the patentee to grant"

substitute "grants" (30)

MR. CHAIRMAN: Amendment Nos. 31 and 32 − Shri Rupchand Pal and Shri Basu Deb Acharia are not here.

Shri Ajoy Chakraborty, are you moving your amendment No.33?

SHRI AJOY CHAKRABORTY : Yes, I am moving the amendment.

I beg to move:

Page 13, *after* line 36, *insert*

"84A. Unsuccessful attempt to obtain compulsory licence directly

from the patentee:-

1. Where the individual merits of an applicant have been determined by the Controller to use the patented invention and that the proposed user has made efforts to obtain authorisation from the patentee to use the patent on reasonable commercial terms and conditions and that such efforts have not been successful within a reasonable period of time, the Controller shall at any time after the expiration of three years from the date of sealing of the patent, grant compulsory license to the proposed user on such terms and conditions as he may deem fit;
2. The reasonable period after which the proposed user may approach the Controller would be not less than 150 days from the date he had approached the patent holder. The commercial terms and conditions offered by the proposed user would be considered as reasonable by the Controller if any royalty and other remuneration offered by him shall be between four and eight per cent of the annual sales turnover at net ex-factory sale price. The period of the licence shall be co-terminus with the period available to the patentee." (33)

MR. CHAIRMAN: Amendments No.34 to 41 − Shri Rupchand Pal is not here.

Shri Ajoy Chakraborty, are you moving amendment No.42?

SHRI AJOY CHAKRABORTY : Yes, I am moving the amendment.

I beg to move:

Page 17, *after* line 10, *insert* −

"92A. Compulsory licences in public interest:-

At any time after sealing of the patent, the Controller shall have the right to issue compulsory licence or licences on any patented product relating to public health as notified by the Government in public interests in official gazette on such terms and conditions as he may deem reasonable.

(2) The reasonable terms and conditions would be either a lumpsum compensation or royalty and other remunerations not exceeding four per cent of net ex-factory annual sale turnover payable to the patentee for the remaining term of the patent." (42)

MR. CHAIRMAN: I shall now put amendment Nos. 30, 33 and 42 moved by Shri Ajoy Chakraborty to the vote of the House.

The amendments were put and negatived.

MR. CHAIRMAN: The question is:

"That clause 39 stand part of the Bill."

The motion was adopted.

Clause 39 was added to the Bill.

Clauses 40 to 66 were added to the Bill.

Clause 1, the Enacting Formula and the Title were added to the Bill.

MR. CHAIRMAN: The hon. Minister may now move that the Bill be passed.

SHRI MURASOLI MARAN: Sir, I beg to move:

"That the Bill be passed."

MR. CHAIRMAN: The question is:

"That the Bill be passed."

The motion was adopted.

SHRI MURASOLI MARAN: Here, I want to make one submission.

Shri Mani Shankar Aiyar expressed a desire about product patent. If he and his party say, 'Yes', with the permission of the hon. Prime Minister and with the approval of the Cabinet, I may bring a Bill that could come into effect in 2005.

SHRI MANI SHANKAR AIYAR : No.

Section 4 of the original 1970 Act, which excluded product patents for drugs and pharmaceuticals has not been amended by this Bill. That position should remain. In the meanwhile, Shri Murasoli Maran should fight in the WTO and the TRIPS Council. After he has won or lost over there or after he has been replaced here, we can consider the Patents (Third Amendment) Bill.